109-104

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES,

NO. 925

THE COUNTY OF GREENE, PLAINTIFF IN ERROR,

vs.

JOHN CONNESS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

Filed August 17th, 1883.



SUPREME COURT OF THE UNITED STATES,

NO. —

THE COUNTY OF GREENE, PLAINTIFF IN ERROR,

vs.

JOHN CONNESS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

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UNITED STATES OF AMERICA, *ss.*

THE PRESIDENT OF THE UNITED STATES.

To the Honorable the Judges of the Circuit Court of the United States for the Eastern Division of the Western District of Missouri, greeting:

[L. S.]

BECAUSE, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, at the November Term, 1882, thereof, between John Conness plaintiff, and The County of Greene, in the State of Missouri, defendant, a manifest error hath happened, to the great damage of the said defendant, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this seventeenth day of April, in the year of our Lord One Thousand Eight Hundred and Eighty-Three.

Issued at office in the City of Jefferson, with the seal of the Circuit Court of the United States, for the Western District of Missouri, dated as aforesaid.

H. C. GEISBERG,

Clerk Circuit Court United States, Western District of Missouri.

Allowed by— A. KREKEL, *Judge.*

Return to Writ.

UNITED STATES OF AMERICA,
Eastern Division of the Western District of Missouri, } *ss.*

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of record and proceedings in the within entitled case, together with all things concerning the same.

In witness whereof, I hereto subscribe my name and affix the seal of said Circuit Court, at the City of Jefferson, this 31st day of May, A. D. 1883.

H. C. GEISBERG, Clerk.

(ENDORSED.)

No. 1651.

UNITED STATES CIRCUIT COURT,
WESTERN DISTRICT OF MISSOURI,
Eastern Division.

JOHN CONNESS, Defendant in Error.
vs.
GREENE COUNTY, Plaintiff in Error.

WRIT OF ERROR
To the Circuit Court of the United States for the Western District of Missouri, Eastern Division.

RETURNED AND FILED,
——— day of ———, 187 .
———
Clerk.

THE UNITED STATES OF AMERICA,

To John Conness—Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error, filed in the Clerk's office of the Circuit Court of the United States for the Eastern Division of the Western District of Missouri, wherein the County of Greene in the State of Missouri, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Arnold Krekel, one of the Judges of the Circuit Court of the United States for the Western District of Missouri, this eighteenth day of May, in the year of our Lord One Thousand Eight hundred and eighty-three.

A. KREKEL, *Judge.*

UNITED STATES OF AMERICA,

Western District of Missouri, Eastern Division, ss.

We hereby acknowledge due service of the within Citation, this twenty-second day of May, A. D. 1883. BOTSFORD & WILLIAMS,

Attorneys for Defendant in Error.

(ENDORSED.)

No. 1651.

UNITED STATES CIRCUIT COURT,
WESTERN DISTRICT OF MISSOURI,
Eastern Division.

JOHN CONNESS, Defendant in Error.
vs.
GREENE COUNTY, Plaintiff in Error.

CITATION.

Filed ——— 187

——— Clerk.

UNITED STATES OF AMERICA,
Eastern Division of the Western District of Missouri. } *Sct.*

Pleas before the Honorable Circuit Court of the United States in and for the Eastern Division of the Western District of Missouri, at the November Term, A. D. 1882, thereof, in the case of

JOHN CONNESS, plaintiff,
vs.
GREENE COUNTY, defendant. } No. 1651.

Be it remembered, that heretofore, to-wit: on the 5th day of August, A. D. 1882, there was filed in the Clerk's office of the Circuit Court of the United States for the Western District of Missouri and in the Eastern Division thereof, a petition in words and figures as follows, to-wit:

Petition.

In the Circuit Court of the United States for the Eastern Division of the Western District of Missouri. At the November Term, A. D. 1882.

JOHN CONNESS, Plaintiff.
against
GREENE COUNTY. Defendant.

Petition.

The plaintiff, John Conness, complaining of Greene County, defendant herein, for his causes of action alleges:

I. That at the times hereinafter mentioned plaintiff was and now is a citizen of the State of Massachusetts, and defendant was and now is a municipal corporation, duly organized and existing under the laws of this State, and a citizen of the State of Missouri.

II. That the Kansas City, Galveston and Lake Superior Railroad Company was incorporated by an act of the General Assembly of the State of Missouri, approved February 9th, 1857, entitled "An act to incorporate the Kansas City, Galveston and Lake Superior Railroad Company," and duly organized in said year under the name and style aforesaid. That by the provisions of said act, said corporation had full power to construct a Branch Railroad, commencing at or near the City of Kansas, to any point on the southern boundary line of the State of Missouri, the directors thereof should select, to connect with any railroad or railroads leading to or in the direction of the City of Memphis, in the State of Tennessee or Napoleon, in the State of Arkansas; that it should be lawful for any county court of any county

in which any part of the route of said railroad or branches may be, or any county adjacent thereto, to subscribe to the stock of said company, and for the stock, subscribed in behalf of such County, said County Court were authorized to issue the bonds of such County to raise funds to pay the same; to authorize and appoint an agent to subscribe for said stock to said railroad in the name of and in behalf of said county; that under and by virtue of an act of said General Assembly, approved February 13, 1864, amendatory of said act of February 9th, 1857, the name of said Company was changed to that of the Kansas City and Cameron Railroad Company.

That under the provisions of an act of said General Assembly, approved March 11th, 1867, amendatory of said act of February 9th, 1857, said Company, then known as the Kansas City and Cameron Railroad Company, was consolidated with the Hannibal and St. Joseph Railroad Company, and all the rights, privileges, franchises and property of said Kansas City and Cameron Railroad Company, were by said consolidation transferred to the Hannibal and St. Joseph Railroad Company, which then and thereby became the owner and possessed of the same.

That said Kansas City & Cameron Railroad Company, prior to said consolidation, to-wit, on the 3d day of October, A. D. 1869, by a resolution adopted by its Board of Directors, at a meeting held in Kansas City, in pursuance of its by-laws, resolved that said Company was desirous of availing itself of the provisions of the general laws of the State of Missouri, authorizing railroad companies to construct branch railroads, approved March 21st, 1868, under the provisions of its charter aforesaid; the name of said branch road to be the Kansas City & Memphis Railroad, which said branch railroad should commence at the City of Kansas, in Jackson County, Missouri, to intersect with the main line thereat; thence to be built through the counties of Jackson and Cass in a general Southeasterly course to the southern boundary line of the State of Missouri, in the direction of Memphis, in the State of Tennessee, as provided in section 13 of said charter; that, in pursuance of said resolutions a board of directors for said Kansas City & Memphis Railroad were then and there appointed, with all the powers and rights of said Kansas City & Cameron Railroad Company, to take all necessary steps to complete their organization; to procure subscriptions of stock, and to that end to open books of subscription and to do all other acts lawful for said last named company in building said branch railroad, and that a duly certified copy of said resolutions and proceedings of said Board of Directors of said Kansas City & Cameron Railroad Company were on the 24th day of November, A. D. 1869, duly filed for record, and recorded in the office of the Secretary of State.

That after said consolidation, to-wit, on the 20th day of June, A. D. 1870, said Hannibal & St. Joseph Railroad Company, by a resolution adopted

by its Board of Directors, at a meeting held in the city of Boston, in accordance with its by-laws, duly approved and ratified said resolutions and proceedings of said Board of Directors of the Kansas City & Cameron Railroad Company, and then and there resolved that said Hannibal & St. Joseph Railroad Company was desirous of carrying out said resolutions of said Kansas City & Cameron Railroad Company, and of continuing the work therein and thereunder commenced on said branch railroad; that said Hannibal & St. Joseph Railroad Company was desirous of availing itself of the provisions of said act of March 21st, 1868, aforesaid, to aid in building such branch road under the authority of its charter, the said act, approved February 9th, 1857, to incorporate the Kansas Ctiy, Galveston & Lake Superior Railroad Company, and the acts amendatory thereof aforesaid; that the name of such branch railroad should be the "Kansas City & Memphis Railroad," which should commence at Kansas City to intersect with the main line thereof, thence to be built through the counties of Jackson and Cass in a generally southeastern direction to the southern boundary line of the State of Missouri, in the direction of Memphis, Tennessee, as prescribed in section 13 of said charter of said Company as aforesaid; and that in pursuance of said resolutions, said Board of Directors of said Kansas City & Memphis Railroad were then and there authorized by the Board of Directors of said Hannibal & St. Joseph Railroad Company to act as such board of directors of said branch railroad, with all the powers and rights which said Hannibal & St. Joseph Railroad had or could exercise under its said charter and the general laws of this State; that an executive construction and managing committee on behalf of said Hannibal & St. Joseph Railroad was then and there appointed, and authorized to construct, maintain, manage and operate said branch road and empowered to procure subscriptions of stock from counties, townships and cities, and to that end to open books of subscription for that purpose; and to do all other lawful acts for said Hannibal & St. Joseph Railroad Company in the construction and maintainance of said branch railroad, under its said charter and the laws of this State; a certified copy of which proceedings and resolutions of said Board of Directors of said Hannibal & St. Joseph Railroad Company were, on the 5th day of July, 1870, filed for record and recorded in the office of the said Secretary of State.

III. That afterward, to-wit, on the 4th day of October, A. D. 1870, the County Court of Greene County, by an order duly entered of record, took and subscribed to the Hannibal & St. Joseph Railroad Company, four thousand shares of the capital stock of said company of the denomination of one hundred dollars to the share, amounting to four hundred thousand dollars, to aid in the building of said branch road, located in said County of Greene, which said branch railroad was to commence at said Kansas City, to intersect

thereat with the railroad theretofore called the Kansas City & Cameron Railroad, then a part of said Hannibal & St. Joseph Railroad; thence to be built through the counties of Jackson and Cass and by way of Springfield in said county of Greene, and thence in a southeasterly direction to the State line in the direction of Memphis, Tennessee, under the authority of said act of February 9th, 1857, and the acts amendatory thereof, and the act of March 21, 1868, to aid in building branch railroads in the State of Missouri, which said branch was called the Kansas City & Memphis Railroad, as is fully recited in said order of said County Court.

IV. That in payment in part of said subscription, defendant thereafter from time to time made, executed and delivered its certain writings obligatory, called Greene County Bonds, numbered from 1 to 290, consecutively, with interest coupons thereto subjoined, which said bonds and coupons were each dated August 1st, A. D. 1871, sealed with the corporate seal of said county, signed by R. P. Mathews and Ralph Walker, the then justices of the County Court of said Greene County, and attested by A. Demuth, the then Clerk of said County Court, and thereby in each of said bonds acknowledged itself indebted and bound to the Hannibal & St. Joseph Railroad Company or bearer in the sum of one thousand dollars, which sum defendant in each of said bonds promises to pay to said company or the bearer thereof at the National Park Bank in the City of New York, twenty years after the date thereof, together with interest at the rate of eight per cent per annum, which said interest was and is to be paid semi-annually on the presentation and delivery at said bank of the coupons thereto severally subjoined, until the payment in full of said principal sum. Said bonds and each of them were issued under and pursuant to the order of the County Court of said County of Greene and in accordance with the acts of the Legislature of the State of Missouri, entitled "An act to incorporate the Kansas City, Galveston and Lake Superior Railroad Company" approved February 9th, 1857, and "An act to amend an act to incorporate the Kansas City, Galveston and Lake Superior Railroad Company" approved February 9th, 1857 "and for other purposes," and also "an act to aid in the building of branch railroads in the State of Missouri, approved March 21st, 1868," as is fully recited in each of said bonds.

V. Each of said bonds was, except the consecutive number thereof in words and figures as follows, to-wit:

UNITED STATES OF AMERICA,

County of Greene, State of Missouri.

No. 11. $1,000.

GREENE COUNTY BOND.

TWENTY YEARS.

Know all men by these presents, that the County of Greene acknowledges itself indebted and bound unto the Hannibal & St. Joseph Railroad Company or bearer in the sum of one thousand dollars, which sum the County of Greene hereby promises to pay to said Company or bearer at the National Park Bank in the City of New York, twenty years after the date of these presents, together with interest thereon from the date hereof, at the rate of eight per cent per annum, which interest shall be paid semi-annually on the presentation and delivery at said bank, of the coupons hereto severally subjoined, until the payment in full of said principal sum.

This bond being issued under and pursuant to an order of the County Court of Greene County, State of Missouri, and in accordance with an act of the Legislature of the State of Missouri, entitled "an act to incorporate the Kansas City, Galveston & Lake Superior Railroad Company" approved February 9th, 1857, and an act to amend an act entitled "an act to incorporate the Kansas City, Galveston & Lake Superior Railroad Company, approved February 9th, 1857, and for other purposes," approved February 13th, 1864, and also an act entitled "an act to aid in the building of branch railroads in the State of Missouri" approved March 21st, 1868.

In witness whereof, the said County Court of Greene County have caused these presents to be signed by the justices and attested by the County Clerk, with the seal of said County affixed, and the coupons hereto attached to be signed by the Treasurer of said County. Done at the city of Springfield, this 1st day of August, A. D. 1871.

R. P. MATHEWS,
[L. S.] RALPH WALKER, Justices.

Attest:

A. DEMUTH,
Clerk of the County Court.

Each of said coupons, except the number and times of payment and the consecutive number of the bond to which they were subjoined, were in words and figures as follows:

"SPRINGFIELD, GREENE COUNTY, MO., August 1st, 1871.

The County of Greene, State of Missouri, acknowledges to owe the sum of forty dollars, payable to bearer on the 1st day of August, 1891. being the interest due on bond No. 11, for 1,000 dollars. This coupon payable at the National Park Bank in the City of New York, State of New York.

JARED E. SMITH,
Treasurer of Greene County."

VI. That plaintiff is the owner and holder for value of six hundred and eighty-six of said interest coupons, for forty dollars each, subjoined to and detached from said Greene County bonds, signed by said Jared E. Smith,

the Treasurer of said County of Greene, and dated August 1st, 1871, and herewith filed, whereby said defendant in each of said coupons acknowledges itself to owe the sum of forty dollars, payable to bearer at the National Park Bank in the City of New York and State of New York, being for interest due on the bonds for the years hereinafter mentioned, to-wit, in the following amounts:

Forty-nine coupons,	No.	9,	due	Feb. 1,	1876	$ 1,960
Forty-nine	"	" 10,	"	Aug. 1,	1876	" 1,960
Forty-nine	"	" 11,	"	Feb. 1,	1877	" 1,960
Forty-nine	"	" 12,	"	Aug. 1,	"	" 1,960
Forty-nine	"	" 13,	"	Feb. 1,	1878	" 1,960
Forty-nine	"	" 14,	"	Aug. 1,	"	" 1,960
Forty-nine	"	" 15,	"	Feb. 1,	1879	" 1,960
Forty-nine	"	" 16,	"	Aug. 1,	"	" 1,960
Forty-nine	"	" 17,	"	Feb. 1,	1880	" 1,960
Forty-nine	"	" 18,	"	Aug. 1,	"	" 1,960
Forty-nine	"	" 19,	"	Feb. 1,	1881	" 1,960
Forty-nine	"	" 20,	"	Aug. 1,	"	" 1,960
Forty-nine	"	" 21,	"	Feb. 1,	1882	" 1,960
Forty-nine	"	" 22,	"	Aug. 1,	"	" 1,960

Total 686, amounting in the aggregate to twenty-seven thousand four hundred and forty dollars: said coupons being in forty-nine equal parts, numbered from nine to twenty-two inclusive, and being in parts of fourteen each, severally subjoined and detached from forty-nine of said Greene County Bonds, numbered as follows, to wit: 12, 11, 13, 14, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229 and 230.

VII. That said coupons were duly and severally presented at maturity thereof at said Bank for payment, which was refused, and all of said coupons with interest thereon at the rate of six per cent. from the maturity thereof respectively are wholly due and unpaid.

Wherefore plaintiff prays judgment for the amount of said coupons and interest thereon at six per cent. after the maturity thereof and for his costs in this action.

BOTSFORD & WILLIAMS,
Attorneys for Plaintiff.

And thereupon, on the 15th day of August, A. D. 1882, there was issued from the office of the Clerk of said Court a Summons in the words and figures following, to-wit:

Summons.

EASTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI. } *Sct.*

The President of the United States of America to the Marshal of the United States for the Western District of Missouri—Greeting:

You are hereby commanded to summon the County of Greene, in the State of Missouri, and the Western District thereof, to be and appear before the Honorable Circuit Court of the United States, in and for the Eastern Division of the Western District of Missouri, on the first day of the next term thereof, to be begun and holden at the City of Jefferson, in said District, on the third Monday, the 20th day of November next; then and there to answer the complaint of John Conness, a citizen of the State of Massachusetts, as set forth in the petition filed in the office of the Clerk of said Court, on the fifth day of August, A. D. One thousand eight hundred and eighty-two. Hereof fail not, and have you then and there this writ.

WITNESS the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 15th day of August, A. D. Eighteen Hundred and Eighty-two. Issued at office, [SEAL.] in the City of Jefferson, in said District, under the seal of said Circuit Court, the day and year last aforesaid.

H. C. GEISBERG,
Clerk of said Court.

On which summons the Marshal made the following return, to-wit:

Return of Marshal.

UNITED STATES OF AMERICA, *Western District of Missouri, Eastern Division.* } *ss.*

I do hereby certify, that I executed the within writ of summons by delivering a true copy of the same together with a certified copy of the petition filed in the cause to J. D. Vanbiber, Clerk of the County Court of Greene County, Missouri, at the office of the said County Clerk in the City of Springfield, Greene Co., Mo. Done this 29th day of August, 1882.

C. C. ALLEN,
U. S. Marshal, Western District of Missouri.

By W. C. BETTS, *Deputy.*

And afterward at the regular stated November term, A. D. 1882, of said Court, and on Tuesday the 21st day of November, 1882, the following further proceedings were had in this cause, to-wit:

Judgment.

JOHN CONNESS, *vs.* GREENE COUNTY. } 1651.

This day come the parties by their respective attorneys, the plaintiff by M. T. C. Williams, Esq., and the defendant by H. C. Young, Esq., and thereupon defendant files answer, to which plaintiff files reply, and the case being called for trial, the same is submitted to the Court on a stipulation this day filed, waiving a jury and setting forth evidence introduced: On consideration whereof the Court finds the issues joined for the plaintiff and that defendant is indebted to the plaintiff by reason of the non-payment of the coupons in the petition described in the sum of thirty-three thousand two hundred and ninety-eight dollars and forty-four cents ($33,298.44.)

It is therefore considered by the Court, that the plaintiff, John Conness, recover against the defendant, the County of Greene in the State of Missouri, the said sum of thirty-three thousand two hundred and ninety-eight dollars and forty-four cents ($33,298.44) the amount so found to be due, together with his costs herein expended, and have execution therefor.

And the answer so filed is in the words and figures following to-wit:

Answer.

In the Circuit Court of the United States, for the Eastern Division of the Western District of Missouri, November Term, A. D. 1882:

JOHN CONNESS, Plaintiff.
vs.
GREENE COUNTY. Defendant.

Now at this day comes the defendant, Greene County, and by leave of the Court, files herein its answer to plaintiff's petition as follows:

Defendant admits that said defendant Greene County is one of the Counties of the State of Missouri, duly created and existing as such under the laws of said State.

Defendant denies that the plaintiff is a citizen of the State of Massachusetts or a resident in said State of Massachusetts, as stated in his said petition.

Defendant denies that said bonds and interest coupons mentioned in plaintiff's petition or either of them or any part thereof were ever made, executed or delivered by said defendant Greene County to said Hannibal and Saint Joseph Railroad Company or bearer, as stated by plaintiff in his said petition.

Defendant denies that by said bonds or interest coupons in said petition mentioned, said defendant Greene County acknowledged itself indebted or in any way bound to said Hannibal and Saint Joseph Railroad Company or bearer in the sum of one thousand dollars or any other sum whatever, as stated in said petition, and denies that said County by said bonds promised to pay said Hannibal and St. Joseph Railroad Company any sum whatever as stated in said petition.

And defendant denies that defendant ever subscribed to the capital stock of said Hannibal & St. Joseph Railroad Company to aid in the construction of a Branch Railroad through said County of Greene as stated in said petition.

Defendant denies that plaintiff is the owner and holder of the coupons sued on and denies most positively, that plaintiff is the owner of the coupons sued on and requires strict proof thereof.

Defendant denies that said bonds and interest coupons or any part of the same mentioned in plaintiff's petition were issued or executed by defendant under authority of or pursuant to any order of the County Court of said Greene County, and denies that said bonds and interest coupons or any part of the same were issued or executed under authority of or pursuant to or in accordance with the provisions of the acts of the Legislature of the State of Missouri, mentioned in said petition or any of them or under or pursuant to or in accordance with or by authority derived from any act of said Legislature or any law ever in force in said State of Missouri.

And defendant denies that there ever was any indebtedness whatever from Greene County to said Hannibal and St. Joseph Railroad Company. And defendant denies that the County Court of Greene County, by any order of said Court, ever authorized the issue or execution of the bonds or interest coupons mentioned in plaintiff's petition.

And defendant denies that the acts of the General Assembly of the State of Missouri, mentioned in plaintiff's petition, or any of the same, or any law of the State of Missouri, general or special, ever authorized or empowered said County of Greene or the County Court of said County of Greene to make a subscription on behalf of or in the name of said Greene County to the capital stock of said Hannibal and St. Joseph Railroad Company, or to issue any bonds or interest coupons of said County to pay such subscription, as stated in said petition.

Defendant denies that the Kansas City and Cameron Railroad Company ever consolidated with the Hannibal and Saint Joseph Railroad Company, and that, if such consolidation ever took place, all the unexecuted powers of the Kansas City and Cameron Railroad Company became extinct and did not pass to and vest in the Hannibal and St. Joseph Railroad Company.

And Defendant denies each and every allegation in said petition contained except as herein expressly admitted to be true.

And defendant for further answer says, that by an act of the General Assembly of the State of Missouri, entitled an act supplemental to an act entitled an act to authorize the formation of Railroad associations and to regulate the same, approved December 13, 1855, approved March 23, 1861, the County courts of the State of Missouri were prohibited from taking or subscribing to the Capital Stock of Railroad Corporations without first obtaining the assent of a majority of all the resident voters of the County in which such subscription was made, which said statute was in full force and effect at the date of the alleged subscription of said Greene County to the stock of said Hannibal and St. Joseph Railroad Company, as stated in said petition, and that said statute last mentioned positively prohibited said County Court from taking or making a subscription for or on behalf of or in the name of said County to the Capital Stock of any Railroad Corporation without first having obtained the assent thereto of a majority of the resident voters in said County, and which assent of said resident voters of Greene County, Defendant avers, was never had or obtained in favor of a subscription to the Capital Stock of said Hannibal and Saint Joseph Railroad Company or any other Railroad Corporation whatever.

And Defendant further says, that said act of the General Assembly of the State of Missouri, entitled "an act to aid in the building of Branch Railroads in the State of Missouri," approved March 21, 1868, and alleged in plaintiff's petition to be recited in said order of said County Court of Greene County, making said alleged subscription to the Hannibal and Saint Joseph Railroad Company and authorizing said subscription was subject to and controlled by the provisions of section 14 of Article XI of the Constitution of the State of Missouri, adopted in the year of 1865, which section of said Constitution prohibits the legislature of the State of Missouri from in any way authorizing Counties in this State to grant aid to Railroad Corporations without a vote of two-thirds of the legal voters of said County in favor of making such subscription, and that no Branch Railroad or other Railroad created or established under or by virtue of or in accordance with said act of March 21, 1868, was or is authorized to receive subscriptions to its Capital Stock or its use or benefit without the assent or vote of two-thirds of all the legal voters of the County making such subscription in favor of the same.

And defendant says and alleges that no vote was ever taken or had in said Greene county upon the question, whether or not said county should subscribe to the capital stock of the Kansas City and Memphis Railroad and that no vote was ever had or taken in said Greene County upon the question whether or not said county should subscribe to the capital stock of the Hannibal & St. Joseph Railroad Company, and that the assent of two-thirds of

the legal voters of said Greene County was never had or obtained by any vote or otherwise to a subscription by said County of Greene to the capital stock of the Hannibal & St. Joseph Railroad Company or to the capital stock of the Kansas City & Memphis Railroad for any purpose whatever. And defendant further says that the Hannibal & St. Joseph Railroad was *was* constructed and completed many years prior to the alleged subscription to its capital stock by said Green County and the alleged execution and issue of said bonds and interest coupons mentioned in said petition, and that said railroad, as located and constructed extends from Hannibal, in Marion county, in the State of Missouri, on the north side of the Missouri river to the city of St. Joseph, in Buchanan County in said State, and that no part of said Hannibal & St. Joseph Railroad is within a distance of fifty miles of Kansas City in said State of Missouri, or within fifty miles of any point on the projected line of the Kansas City & Memphis Railroad, and that no part of said Hannibal & St. Joseph Railroad or any branch of said railroad (if it has any branches) is within a distance of one hundred miles of said County of Greene or within the distance of one hundred miles of any county adjoining said Greene County.

Defendant further says, that neither the Kansas City, Galveston and Lake Superior Railroad nor the Hannibal and St. Joseph Railroad nor any branch of either of said railroads was ever created or operated in or through said Greene county or in or through any county adjoining said County of Greene, or within one hundred miles of said Greene County, or within one hundred miles of any county adjoining to said Greene County.

Defendant further says, said Hannibal & St. Joseph Railroad Company never accepted or in any way recognized or ratified said alleged and pretended subscription of Greene County to the capital stock of said company.

And that said Hannibal & St. Joseph Railroad Company never issued or delivered any of its stock or any certificates of stock whatever to said Greene County.

And defendant further says, that if any subscription was ever made by said County Court of Greene County in the name of or on behalf of said Greene County to the capital stock of said Hannibal & St. Joseph Railroad Company for any purpose whatever that the same was and is unauthorized by law and wholly and absolutely null and void.

And defendant further says, that if said County Court of Greene County, or the Judges or Justices or Clerk thereof, or the Treasurer of said County or either or any of them or all of them ever executed or issued the bonds or interest coupons mentioned in plaintiff's petition or any of them; that the same are wholly and absolutely null and void and of no legal or binding force or effect on said county for want of lawful authority in said Court

and to do said act or to issue or to execute said bonds or interest coupons.

And defendant having fully answered prays to be discharged with its costs.

THRASHER & YOUNG for Defendant.

And plaintiff's reply to the answer of defendant, filed as aforesaid, is in the words and figures following, to-wit:

Reply.

JOHN CONNESS, *vs.* GREENE COUNTY. } No. 1651.

Reply.

Plaintiff for reply to the answer of defendant denies each and every allegation of new matter of fact therein contained.

BOTSFORD & WILLIAMS,
For Plaintiff.

And the stipulation waiving jury and as to trial and evidence, filed as aforesaid, is in the words and figures following, to-wit:

Stipulation waiving Jury and setting forth evidence introduced.

In the Circuit Court of the United States, for the Eastern Division of the Western District of Missouri, at the November Term, A. D. 1882.

JOHN CONNESS } Plaintiff.
against } No. 1651.
GREENE COUNTY. } Defendant.

It is hereby agreed and stipulated by and between the parties to the above entitled cause, that a Jury is hereby waived and said cause is submitted to the Court on the following evidence, which is hereby considered as introduced on the part of plaintiff herein.

I. An act of the General Assembly of the State of Missouri entitled "An act to incorporate the Kansas City, Galveston and Lake Superior Railroad Company" approved February 9th, 1857.

Laws of Missouri 1856–7, page 162.

II. An act of the General Assembly of the State of Missouri, entitled "An act to amend an act entitled 'An act to incorporate the Kansas City, Galveston and Lake Superior Railroad Company,' approved February 9th, 1857, and for other purposes" approved February 13th, 1864.

Laws of Missouri 1863–4, page 480.

III. An act of the General Assembly of the State of Missouri entitled "An act to amend an act, entitled 'An act to incorporate the Kansas City, Galveston and Lake Superior Railroad Company' approved February 9th, 1857," approved March 11th, 1867.

Laws of Missouri, 1867, page 143.

IV. An act of the General Assembly of the State of Missouri, entitled "An act to aid in the building of Branch Railroads in the State of Missouri," Approved March 21st, 1868.

Laws of Missouri, 1868, page 90.

V. A certified copy of the proceedings of the Board of Directors of the Kansas City, Galveston and Lake Superior Railroad Company, adopted November 12th, 1866, changing the name of said Company to the Kansas City and Cameron.

Filed in the office of the Secretary of State of Missouri, November 15th, 1866.

VI. A certified copy of the Resolutions of the Board of Directors of the Kansas City and Cameron Railroad Company, authorizing the building of a Branch Railroad of said Company to be called the "Kansas City and Memphis Railroad."

Filed in the office of said Secretary of State, November 24th, 1869.

VII. Deposition of Charles E. Kearney for plaintiff, taken and certified on the 19th day of November, A. D. 1881, in the case of Oliver Beaulieu against Greene County, No. 1516, in this Court with the exhibits thereto attached.

This deposition is admitted with the same effect and subject to the same objections as though it had been duly and regularly taken and certified in this cause.

VIII. A certified copy of the proceedings of the Board of Directors of the Hannibal and St. Joseph Railroad Company of June 20th, 1870, confirming and approving the resolutions of the Kansas City and Cameron Railroad Company to build the Branch Railroad known as the Kansas City and Memphis Branch.

Filed in the office of the Secretary of State of Missouri, July 5th, 1870.

IX. Certified copies of the proceedings and orders of the County Court of Greene County, Missouri, concerning the subscription to the Capitol Stock, the issue and delivery of the bonds and coupons sued on in this action as follows: Had and made on the 7th day of July, 1871, and on the 8th day of July, 1871, and on the 4th day of October, 1870, and on the 8th day of April, 1872, and on the 7th day of May, 1872, and on the 8th day of May, 1872, and on the 2d day of July, 1872, and on the 9th day of July, 1872.

X. The Bonds and coupons described in plaintiff's petition and produced by plaintiff and introduced by him in evidence, and the signatures

thereto admitted to be genuine—the seal attached to bonds to be the seal of Greene County, and that the officers signing the same were the duly qualified and acting officers of said County, as designated in said bonds and coupons.

To all of which evidence offered by plaintiff in said cause, and to each and every part thereof, defendant duly objects for the reason, that the same is incompetent, irrelevant and immaterial, and that the County Court of Greene County was never authorized by law to make subscription to the Stock of any railroad company, or to issue any bonds of said county to pay for such subscription.

BOTSFORD & WILLIAMS,
Attorneys for Plaintiff.
HENRY C. YOUNG,
Attorney for Greene County, Defendant.

And afterward at the said regular stated November term, 1882, of said Court, and on the 22d day of November, the following further proceedings were had in this cause, to-wit:

JOHN CONNESS, *vs.* GREENE COUNTY. } 1651.

This day comes the defendant by its attorney, H. C. Young, Esq., and filed a motion for a new trial herein;

Which motion is in words and figures as follows, viz:

Motion for new Trial.

In the Circuit Court of the United States, for the Eastern Division of the Western District of Missouri, November Term, 1882.

JOHN CONNESS, Plaintiff.
vs.
GREENE COUNTY. Defendant.

Now, at this day comes the defendant and by leave of the Court, files herein its motion to set aside the finding and judgment of the Court and grant a new trial for the following reasons:

1st. Because the Court, against the objections of defendant, admitted illegal and incompetent evidence at the trial.

2d. Because the finding of the Court and judgment is against the law.

3d. Because the finding of the Court is against the evidence and the weight of evidence produced at the trial.

4th. Because the finding and judgment of the Court was for the plaintiff, when it should have been for the defendant.

5th. Because the finding and judgment of the Court is against both law and evidence, and against the law under the evidence and for other causes.

THRASHER & YOUNG,
For Defendant.

And afterward, on said 22d day of November, 1882, the following further proceedings were had in the above entitled cause, to-wit:

JOHN CONNESS, vs. GREENE COUNTY. } 1651.

This day come the parties by their respective attorneys, and the motion for a new trial this day filed, having been submitted, it is ordered, that the same be overruled, and defendant thereupon files a motion in arrest of the judgment herein, which motion having been submitted, on consideration thereof, it is ordered that said motion be overruled. A special finding of the facts proven on the trial of this case was also presented to the Court, and said finding is signed and approved by the Court and ordered to be filed and made a part of the record.

And the motion in arrest of judgment, so filed as aforesaid, is in the words and figures following, to-wit:

Motion in Arrest.

In the Circuit Court of the United States, for the Eastern Division of the Western District of Missouri, November Term thereof, A. D. 1882.

JOHN CONNESS, Plaintiff, vs. GREENE COUNTY, Defendant. }

Now, at this day comes defendant, and by leave of the Court, files herein its motion to arrest and set aside the judgment of the Court rendered in the above entitled cause for the following reasons:

1st. Because the petition of the plaintiff in said case states no cause of action against defendant.

2d. Because the acts of the Legislature of the State of Missouri recited in said petition, show that the County Court of Greene County had no power or authority to issue the bonds sued on without first having obtained the assent of two thirds of the legal voters of Greene County.

3d. Because the act of the Legislature of the State of Missouri, of the 31st of March, 1868, is in conflict with the 14th Section of Article XI of the Constitution of the State of Missouri, A. D. 1865, and is therefore void.

4th. Because said petition of plaintiff avers that the bonds mentioned in said petition were issued by authority of said Act of the Legislature of the 21st of March, A. D. 1868, and said act is subject to and controlled by the provisions of Section 14 of Article XI. of the Constitution of the State of Missouri, adopted in the year of A. D. 1865, and said petition does not show that said constitutional provisions were ever complied with.

5th. Because at the time mentioned in plaintiffs petition, that defendant subscribed to the Capital Stock of the Hannibal and St. Joseph Railroad and

issued the bonds mentioned, the defendant was prohibited from taking and subscribing to the Capital Stock of said Railroad Corporation or any other Corporation without first obtaining the assent of two-thirds of the legal voters of said County of Greene at a special or general election, and plaintiff does not show in his said petition that any vote was ever had.

6th. Because said petition shows upon its face that the bonds and interest coupons mentioned in said petition are and were null and void for want of power in the County Court of Greene County to issue the same and for other causes.

THRASHER & YOUNG,
For Defendant.

And the finding of facts filed as aforesaid is in the words and figures following, to wit:

Finding of Facts.

In the Circuit Court of the United States, for the Western District of Missouri, Eastern Division, at the November Term, A. D. 1882.

JOHN CONNESS, Plaintiff.
against
GREENE COUNTY. Defendant.
No. 1651.

Finding of Facts.

This cause coming on this 21st day of November, A. D. 1882, and at said November Term of this Court to be finally heard, and a jury being by the parties expressly waived, the cause is heard by the Court on the pleadings and evidence. And thereupon the Court makes the following special finding of facts:

I. That the Kansas City, Galveston and Lake Superior Railroad Company was incorporated and organized under and by virtue of An act of the General Assembly of the State of Missouri, approved February 9th, 1857, and entitled "An act to incorporate the Kansas City, Galveston and Lake Superior Railroad Company."

That by the provisions of said act, said corporation had full power to construct a branch railroad, commencing at or near the City of Kansas to any point on the Southern boundary line of the State of Missouri, the directors thereof should select, to connect with any road or roads leading in the direction of the City of Memphis, in the State of Tennesse, or Napoleon, in the State of *Kansas*.

That it should be lawful for any County Court of any county, in which any part of the route of said railroad or branches may be or any county

adjacent thereto, to subscribe to the stock of said Company, and for the stock subscribed in behalf of each County thereto, said County Courts were authorized to issue bonds of such County to raise funds to pay the same, and to authorize and appoint an agent to subscribe for said stock to said railroad in the name of and on behalf of said County.

That under and by virtue of the provisions of an act of the General Assembly of the State of Missouri, Approved February 13th, 1864, amendatory of said act of February 9th, 1857, the name of said Railroad Corporation was changed to that of the Kansas City and Cameron Railroad Company.

That under the provisions of an act of the General Assembly of the State of Missouri, Approved March 11th, 1867, entitled "An act to amend an act entitled "an act to incorporate the Kansas City, Galveston and Lake Superior Railroad Company," approved February 9th, 1857, the said Corporation, then known as the Kansas City and Cameron Railroad Company, on the 21st day of February, in the year 1870, was consolidated with the Hannibal and St. Joseph Railroad Company, and all the rights, privileges, franchises and property of said Kansas City and Cameron Railroad Company, were by said consolidation, transferred to the Hannibal and St. Joseph Railroad Company, which then and thereby became the owner of and possessed of the same.

That the said Kansas City and Cameron Railroad Company prior to its said consolidation, to-wit, on the 3rd day of October, A. D. 1869, by a resolution adopted by the Board of Directors of said Company at a meeting held in Kansas City, Missouri, in pursuance of its by-laws, resolved that the said Kansas City and Cameron Railroad Company was desirous of availing itself of the provisions of the General laws of the State of Missouri, authorizing railroad companies to construct Branch Railroads, approved March 21st, 1868, under the authority of its charter aforesaid, the name of said Branch Railroad to be the Kansas City and Memphis Railroad, which said branch road should commence at the City of Kansas in Jackson County, Missouri, to intersect the main line thereat, thence to be built through the counties of Jackson and Cass in a general southeasterly course to the southern boundary of the State of Missouri in the direction of Memphis in the State of Tennessee, as prescribed in section thirteen of said charter, and that in pursuance of said resolution a board of directors for said Kansas City and Memphis Railroad were then and there appointed with all the powers and rights of said Kansas City and Cameron Railroad Company to take all necessary steps to complete their organization, to procure subscriptions of stock, and to that end to open books for subscription, and to do all other acts lawful for said Kansas City and Cameron Railroad Company, in the building and construction of said branch railroad and that a duly certified copy of said resolutions and proceedings of said Board of Directors of said Kansas

City and Cameron Railroad Company were on the 24th day of November, A. D. 1869, duly filed for record and recorded in the office of the Secretary of the State of Missouri.

That after said consolidation of said Kansas City and Cameron Railroad Company with said Hannibal and St. Joseph Railroad Company, to wit: on the 20th day of June, 1870, said Hannibal and St. Joseph Railroad Company by a resolution, adopted by its Board of Directors, at a meeting, held in the City of Boston, in the State of Massachusetts, approved and confirmed said resolutions of said Board of Directors of said Kansas City and Cameron Railroad Company and then and there resolved, that the said Hannibal and St. Joseph Railroad Company was desirous of availing itself of the provisions of the Act to aid in building Branch Railroads in the State of Missouri, approved March 21st, 1868, under the authority of its charter, the act to incorporate the Kansas City, Galveston and Lake Superior Railroad Company, aforesaid, said authority being conveyed in Section (13,) thirteen, of said act, and the act amendatory thereof, approved Feb'y 13th, 1864, the name of said branch railroad to be the Kansas City and Memphis Railroad, which said Branch road should commence at said Kansas City, to intersect with the main line thereat; thence to be built through the Counties of Jackson and Cass in a generally southeasterly course to the southern boundary line of the State of Missouri in the Direction of Memphis, Tennessee, as prescribed in section Thirteen of the Act incorporating the Kansas City, Galveston and Lake Superior Railroad Company, approved Feb'y 9, 1857, and the Act amendatory thereto, approved Feb'y 13, 1864, said Act being the charter of said Company, and that in pursuance of said resolution said Board of Directors of said Kansas City and Memphis Railroad, were then and there authorized by the Board of Directors of said Hannibal and St. Joseph Railroad Company to act as such board of directors of such branch railroad with all the powers to take all necessary steps to complete their organization as aforesaid, and with all powers and rights which the said Hannibal and St. Joseph Railroad had or could exercise under its said Charter and the General laws of this State: That an Executive Construction and Managing Committee on behalf of said Hannibal and St. Joseph Railroad Company was then and there appointed and authorized to construct, maintain, manage and operate said branch road, and empowered to procure subscriptions of stock from counties, townships and cities; and to that end to open books for subscription for that purpose, and to do all other acts lawful for said Hannibal and St. Joseph Railroad Company in the building, construction and maintenance of said branch railroad under its said Charter and the laws of this State, a certified copy of which proceedings and resolutions of the Board of Directors of said Hannibal and St. Joseph Railroad Company were on the 5th day of July, A. D. 1870, filed for record and recorded in the office of the Secretary of State of Missouri.

That afterward, to-wit, on the 4th day of October, A. D. 1870, the County Court of Greene County, by an order duly entered of record took and subscribed to the Hannibal and St. Joseph Railroad Company four thousand shares of the stock of said Company of the denomination of one hundred dollars each, to the share, amounting to four hundred thousand dollars, to aid in the building of said Branch road, located in said County of Greene, which was to commence at Kansas City in Jackson County, Missouri, to intersect thereat with the road theretofore called the Kansas City and Cameron railroad, then a part of the said Hannibal and St. Joseph Railroad, thence to be built through the Counties of Cass and Jackson by the way of Springfield in said County of Greene, and thence in a southeasterly direction to the State line in the direction of Memphis, Tennessee, said road to be built under the authority of an act to incorporate the Kansas City, Galveston and Lake Superior Railroad Company, approved February 9th, 1857, and the acts amendatory thereof, and the act of March 21st, 1868, to aid in the building of branch railroads in the State of Missouri, which said branch was called the Kansas City and Memphis Railroad.

That in payment of said subscription, said County of Greene thereafter, to-wit: On the first day of August, 1871, executed its written obligations of that date, called Greene County bonds, numbered from one to four hundred inclusive, with interest coupons thereto subjoined, each sealed with its corporate seal and signed by R. P. Mathews and Ralph Walker, the then justices of the County Court of Greene County and attested by A. Demuth, the then Clerk of said County Court of Greene County, and thereby in each of said bonds acknowledged itself indebted and bound to the Hannibal and St. Joseph Railroad Company, or bearer, in the sum of one thousand dollars, which sum said defendant in each of said bonds promised to pay to said Company or bearer, at the National Park Bank in the City of New York, twenty years after date thereof, together with interest thereon from said date at the rate of eight per cent. per annum, which said interest was and is to be paid semi-annually, on the presentation and delivery at said bank of the Coupons thereto severally subjoined until payment in full of said principal sums. Said bonds and each of them contained recitals therein, that they were issued under and pursuant to the order of the County Court of said County of Greene, and in accordance with the acts of the Legislature of the State of Missouri, entitled an act to incorporate the Kansas City, Galveston and Lake Superior Railroad Company, "approved February 9th, 1857, and 'an act, to amend an act entitled an act, to incorporate the Kansas City, Galveston and Lake Superior Railroad Company, approved February 9, 1857,' and for other purposes," approved February 13th, 1864, and also an act to aid in the building of Branch railroads in the State of Missouri," approved March 21st, 1868.

That each of said bonds, except the number thereof, is as follows, to-wit:

UNITED STATES OF AMERICA,

County of Greene, State of Missouri.

No. 11. $1,000.

GREENE COUNTY BOND.

TWENTY YEARS.

Know all men by these presents, that the County of Greene acknowledges itself indebted and bound unto the Hannibal & St. Joseph Railroad Company or bearer in the sum of one thousand dollars, which sum the County of Greene hereby promises to pay to said Company or bearer at the National Park Bank in the City of New York, twenty years after the date of these presents, together with interest thereon from the date hereof, at the rate of eight per cent per annum, which interest shall be paid semi-annually on the presentation and delivery at said bank, of the coupons hereto severally subjoined, until the payment in full of said principal sum.

This bond being issued under and pursuant to an order of the County Court of Greene County, State of Missouri, and in accordance with an act of the Legislature of the State of Missouri, entitled "an act to incorporate the Kansas City, Galveston & Lake Superior Railroad Company" approved February 9th, 1857, and an act to amend an act entitled "an act to incorporate the Kansas City, Galveston & Lake Superior Railroad Company, approved February 9th, 1857, and for other purposes," approved February 13th, 1864, and also an act entitled "an act to aid in the building of branch railroads in the State of Missouri" approved March 21st, 1868.

In witness whereof, the said County Court of Greene County have caused these presents to be signed by the justices and attested by the County Clerk, with the seal of said County affixed, and the coupons hereto attached to be signed by the Treasurer of said County. Done at the city of Springfield, this 1st day of August, A. D. 1871.

R. P. MATHEWS,

[L. S.] RALPH WALKER, Justices.

Attest:

A. DEMUTH,

Clerk of the County Court.

That plaintiff is the owner and holder for value before maturity of the bonds and coupons mentioned in his petition, and that the said coupons are all due and unpaid. Each of said coupons *are* as follows:

"SPRINGFIELD, GREENE COUNTY, MO., August 1st, 1871.

The County of Greene, State of Missouri, acknowledges to owe the sum of forty dollars, payable to bearer on the 1st day of August, 1891. being the interest due on bond No. 11, for 1,000 dollars. This coupon payable at the National Park Bank in the City of New York, State of New York.

JARED E. SMITH,
Treasurer of Greene County."

Conclusion of Law.

The Court finds as a conclusion of law, that the facts thus specially found constitute no defense to plaintiff's action, and that plaintiff is entitled to recover herein, to which finding the defendant excepted, and the Court thereupon ordered judgment for the plaintiff as follows:

This day come the parties by their respective attorneys, the plaintiff by M. T. C. Williams, Esq., and the defendant by H. C. Young, Esq., and thereupon defendant files answer, to which plaintiff files reply, and the case being called for trial, the same is submitted to the Court on a stipulation this day filed, waiving a jury and setting forth evidence introduced: On consideration whereof the Court finds the issues joined for the plaintiff and that defendant is indebted to the plaintiff by reason of the non-payment of the coupons in the petition described in the sum of thirty-three thousand two hundred and ninety-eight dollars and forty-four cents ($33,298.44.)

It is therefore considered by the Court, that the plaintiff, John Conness, recover against the defendant, the County of Greene in the State of Missouri, the said sum of thirty-three thousand two hundred and ninety-eight dollars and forty-four cents ($33,298.44) the amount so found to be due, together with his costs herein expended, and have execution therefor.

A. KREKEL, Judge.

And afterward in vacation of said Circuit Court and on Thursday, the 17th day of May, 1883, the following further proceedings were had in the above entitled cause, to-wit:

JOHN CONNESS
vs. } 1651.
GREENE COUNTY.

This day there is received by mail and filed herein a stipulation as to submission of this cause upon printed briefs.

Which stipulation is in the words and figures following, to-wit:

Stipulation as to submission.

In the Circuit Court of the United States for the Eastern Division of the Western District of Missouri, at the April Term, A. D. 1883.

JOHN CONNESS } Plaintiff.
against
GREENE COUNTY. } Defendant.

Stipulation.

It is hereby agreed and stipulated between the parties to this action, that—

This cause shall be submitted to the Supreme Court of the United States on the first day of the next October Term, A. D. 1883, of said Court, under Rule No. 20 of said Court, on the printed record and briefs and arguments of counsel.

That plaintiff in Error, the County of Greene, shall cause to be printed twenty-five copies of the record in said cause, and twenty-five copies of the brief and argument of counsel for said plaintiff in Error in said cause on or before the first day of July, A. D. 1883, and shall serve a printed copy of said record in said cause, and a printed copy of said brief and argument on the counsel of the defendant in Error herein, John Conness, on or before the first day of July, A. D. 1883. And the counsel for defendant in Error, John Conness, shall serve a copy of their printed brief and argument on said counsel for plaintiff in Error, Greene County, on or before the fifteenth day of August, A. D. 1883, and said counsel for plaintiff in Error shall serve on said defendant in Error, said counsel on or before the 15th day of September, A. D. 1883, a printed copy of the reply of said counsel to said brief and argument of counsel for defendant in Error.

And on or before the first Monday in October, 1883, there shall be sent to and filed by the plaintiff in Error herein, with the Clerk of said Supreme Court in his office at Washington City, D. C., twenty copies of said printed record and twenty copies each of the said briefs and arguments of said counsel of said parties, and said cause shall thereupon be submitted to said Supreme Court on said first day of said October Term thereof on said printed record and briefs and arguments so filed.

This stipulation is to be filed in the Clerk's office of said Circuit Court in said cause, and is to be and is hereby made a part of the record of said cause and is to be certified by the Clerk of said Circuit Court with the residue of said record and as a part thereof to the said Supreme Court under the Writ of Error issued in said cause.

P. T. SIMMONS,
Prosecuting Attorney for Greene County, Mo.,
County Court Justices of Greene County.
BOTSFORD & WILLIAMS,
Attorneys for John Conness.

And afterward in vacation of said Circuit Court, and on the 19th day of May, 1882, the following further proceedings were had in the above entitled cause, to wit:

This day there is received and filed herein the following order, viz:

UNITED STATES OF AMERICA,
Eastern Division of the Western District of Missouri. } *Sct.*

In the Circuit Court of the United States, in and for said Division and District:

At Chambers, before the Hon. A. Krekel, Judge,
Kansas City, Mo., May 18th, 1883.

JOHN CONNESS,
vs.
GREENE COUNTY. } 1651.

This day there is presented to the undersigned at Chambers, a writ of error to reverse the judgment in the above entitled cause, a citation directed to plaintiff and an appeal bond in the sum of five hundred dollars.

Whereupon said writ of error is allowed, said citation signed and bond approved and ordered to be filed and made part of record herein.

A. KREKEL, *Judge.*

And the appeal bond so filed as aforesaid is in the words and figures following, to wit:

Appeal bond.

KNOW ALL MEN BY THESE PRESENTS, That we, Greene County, by O. B. Smith, F. F. Fine and Jas. N. Hosey, Justices of Greene County Court as principal, and Benj. U. Massey and Thos. K. O'Day as sureties, are held and firmly bound unto John Conness in the full and just sum of five hundred dollars, to be paid to the said John Conness, his heirs, executors, administrators and assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents, sealed with our seals and dated this 11th day of May, in the year of our Lord, One Thousand Eight Hundred and Eighty-three.

WHEREAS, lately at the November Term, A. D. 1882, of the Circuit Court of the United States, for the Western District of Missouri, Eastern Division, in a suit depending in said Court between John Conness plaintiff, and Greene County in the State of Missouri, defendant, judgment was rendered against the said defendant and the said defendant having obtained a writ of error of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said plaintiff, citing and admonishing him to be and appear at a Supreme Court of the United States to be held at Washington, D. C., on the Second Monday of October next:

Now, the condition of the above obligation is such, that if the said Greene County shall prosecute said writ to effect and answer all damages and costs, if it fail to make good its plea, then the above obligation to be void, else to remain in full force and virtue,

Sealed and delivered in presence of

O. B. SMITH, P. J. C. Court, [Seal.]
JAS. N. HOSEY, [Seal.]
F. F. FINE, Ass. Justice, [Seal.]
BENJ. U. MASSEY, [Seal.]
THOS. K. O'DAY, [Seal.]

Approved by A. KREKEL, Judge.

UNITED STATES OF AMERICA, } SCT.
WEST. DISTRICT OF MO. }

Before me, McLain Jones, personally appeared Benj. U. Massey, to me well known who upon oath states that he is worth over and above his indebtedness the sum of Five Thousand dollars and that he owns real property to that amount.

BENJ. U. MASSEY,

Subscribed and sworn to before me this 11th day of May, 1883.

McLAIN JONES,
U. S. Commissioner.

UNITED STATES OF AMERICA, } SCT.
WEST. DISTRICT OF MO. }

Before me, McLain Jones, U. S. Commissioner for the Western District of Missouri, personally appeared Thomas K. O'Day, to me well known who upon oath states that he is worth over and above his indebtedness the sum of Five thousand dollars.

THOS. K. O'DAY.

Subscribed and sworn to before me this 11 day of May, 1883.

McLAIN JONES,
U. S. Commissioner.

And afterward in vacation of said Circuit Court and on the 25th day of May, 1883, the following further proceedings were had in the above entitled cause, to-wit:

JOHN CONNESS, *vs.* GREENE COUNTY. } 1651.

This day there is received and filed herein a stipulation in regard to the printing of the record in this cause.

Which stipulation is in the words and figures following, to-wit:

Stipulation as to printing record.

In the U. S. Circuit Court for the Eastern Division of the Western District of Missouri.

JOHN CONNESS, Plaintiff.
against
GREENE COUNTY, Defendant.

The above cause having been removed by writ of error to the Supreme Court of the United States, it is agreed by said parties, that instead of having the record printed at Washington City, D. C. under the supervision of the Clerk of the said Supreme Court, said defendant Greene County the plaintiff in error to said Supreme Court may have said record printed either in Jefferson City or Springfield, Missouri, and that the record so printed may be filed and used with like effect with the printed records required by rule ten (10) of said U. S. Supreme Court.

It is further agreed, that this stipulation shall be filed and made a part of the record in the above cause and certified as a part of the record to said Supreme Court.

BOTSFORD & WILLIAMS,
for the Plaintiff.
P. T. SIMMONS,
Atty for the Defendant.

May 22, 1883.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
EASTERN DIVISION OF THE
WESTERN DISTRICT OF MISSOURI. } SCT.

I, Henry C. Geisberg, Clerk of the Circuit Court of the United States, in and for said District, DO HEREBY CERTIFY that the foregoing writing is a true transcript of the record and proceedings in case No. 1651, of John Conness against Greene County, as fully as the same remains on file and of record in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court, at office, in the City of Jefferson, [L. S.] in said District, this thirty-first day of May, 1883.

H. C. GEISBERG, Clerk.

109—104

SUPREME COURT, U.S.
FILED
AUG 10 1883
JAMES H. McKENNEY, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

THE COUNTY OF GREENE, PLAINTIFF IN ERROR,

vs.

JOHN CONNESS, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

STATEMENT, ASSIGNMENT OF ERRORS AND BRIEF OF POINTS AND AUTHORITIES.

BY P. T. SIMMONS, PROS. ATT'Y, AND
CHAS. W. THRASHER AND
HENRY C. YOUNG, FOR PLAINTIFF IN ERROR.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1883.

THE COUNTY OF GREENE, PLAINTIFF IN ERROR,

VS.

JOHN CONNESS, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

STATEMENT.

This is an action brought in the Circuit Court of the United States for the Eastern Division of the Western District of Missouri to collect from Greene County 686 interest coupons amounting in the aggregate to $27,440, detached from Bonds alleged to have been issued by Greene County in the State of Missouri, to the Hannibal and St. Joseph Railroad Company, to pay a subscription of the County Court of said County to the capital stock of said Railroad Company to aid in building a Branch of said Railroad to be known by the name of the

Kansas City and Memphis Railroad, which Branch Railroad was to commence at or near the City of Kansas in the State of Missouri, and terminate at the southern boundary line of said State to connect with any Railroad leading to or in the direction of the City of Memphis in the State of Tennessee or Napoleon in the State of Arkansas. The power to make such subscription and issue bonds to pay the same is claimed under the charter of the Kansas City, Galveston and Lake Superior Railroad Company, the name of which Company was afterwards changed to the Kansas City and Cameron Railroad Company and said Company consolidated with and merged in the Hannibal and St. Joseph Railroad Company. Said Branch Railroad having been established as an independent corporation and said subscription made under the act of the General Assembly of the State of Missouri entitled "An Act to aid the building of Branch Railroads in the State of Missouri;" approved March 21, 1868.

By an examination of the petition and answer, and the special finding of facts by the Court in this case, it will be seen that the material facts involved therein are as follows:

1. That an act of the General Assembly of the State of Missouri entitled "an Act to incorporate the Kansas City, Galveston and Lake Superior Railroad Company," approved Feb. 9, 1857, authorized said Railroad Company to locate and construct and operate a Railroad from Kansas City in Jackson County, Mo., by the most direct and practicable route in the direction of Galveston in the State of Texas or to intersect any road or roads now being constructed or to be constructed, by the States of Texas or Arkansas, or by any Company or Companies which are or may be chartered by either or both of said States. Also to construct said Railroad north from Kansas City by the most direct and practicable route to the north boundary of the State of Missouri in the direction of Fond Du Lac on Lake Superior, with authority to construct a Branch Railroad from Kansas City to the southern boundary of the State of Missouri, and Branch Railroads to any point in any of the Counties through which the said Railroad may be located.

2. That an act of the General Assembly of Missouri approved Feb. 13, 1864, authorized the Board of Directors of said

Railroad Company at any time to change the name of said Company.

3. That the name of said Kansas City, Galveston and Lake Superior Railroad Company was changed to the Kansas City and Cameron Railroad Company.

4. That an act of the General Assembly of Missouri approved March 11, 1867, authorized said Railroad to consolidate with any other Company upon such terms as may be deemed just and proper.

5. That on Feb. 21, 1870, under said last-named act said Company, then known as the Kansas City and Cameron Railroad Company, was consolidated with the Hannibal and St. Joseph Railroad Company and all the rights, privileges, franchises and property of said Kansas City and Cameron Railroad Company which could by law be transferred were by said consolidation transferred to the Hannibal and St. Joseph Railroad Company.

6. That said Kansas City and Cameron Railroad Company prior to said consolidation, to-wit: on the 3d day of October, A. D. 1869, by a resolution adopted by its Board of Directors at a meeting held in Kansas City in pursuance of its by laws, resolved that said Company was desirous of availing itself of the provisions of the general laws of the State of Missouri authorizing Railroad Companies to build Branch Railroads approved March 21st, 1868, under the provisions of its charter aforesaid; the name of said branch road to be the Kansas City and Memphis Railroad, which said Branch Railroad should commence at the City of Kansas, in Jackson County, Missouri, to intersect with the main line thereat, thence to be built through the Counties of Jackson and Cass in a general southeasterly course to the southern boundary line of the State of Missouri in the direction of Memphis in the State of Tennessee as provided in section 13 of said charter; that in pursuance of said resolutions a Board of Directors for said Kansas City and Memphis Railroad were then and there appointed with all the powers and rights of said Kansas City and Cameron Railroad Company to take all necessary steps to complete their organization; to procure subscriptions to stock, and to that end to open books of subscription and to do all other acts lawful for said last named Company in building said Branch Railroad, and that a duly certified copy of said

resolutions and proceedings of said Board of Directors of said Kansas City and Cameron Railroad Company were on the 24th day of November, A. D. 1869, duly filed for record and recorded in the office of the Secretary of State.

7. That after said consolidation of said Kansas City and Cameron Railroad Company with said Hannibal and St. Joseph Railroad Company, to-wit, on the 20th day of June, 1870, said Hannibal and St. Joseph Railroad Company by a resolution adopted by its Board of Directors at a meeting held in the City of Boston in the State of Massachusetts, approved and confirmed said resolutions of said Board of Directors of said Kansas City and Cameron Railroad Company, and then and there resolved that the said Hannibal and St. Joseph Railroad Company was desirous of availing itself of the provisions of the act to aid in building Branch Railroads in the State of Missouri, approved March 21, 1868, under the authority of its charter, the act to incorporate the Kansas City, Galveston and Lake Superior Railroad Company aforesaid, said authority being conveyed in section (13) thirteen of said act, and the act amendatory thereto, approved Feb. 13th, 1864, the name of said Branch Railroad to be the Kansas City and Memphis Railroad, which said Branch road should commence at said Kansas City to intersect the main line thereat, thence to be built through the Counties of Jackson and Cass in a generally southeasterly course to the southern boundary line of the State of Missouri in the direction of Memphis, Tennessee, as prescribed in section thirteen of the act incorporating the Kansas City, Galveston and Lake Superior Railroad Company, approved Feb. 9, 1857, and the act amendatory thereto, approved Feb. 13, 1864, said act being the charter of said Company. And that in pursuance of said resolution said Board of Directors of said Kansas City and Memphis Railroad were then and there authorized by the Board of Directors of said Hannibal and St. Joseph Railroad Company to act as such Board of Directors of such Branch Railroad with all the powers to take all necessary steps to complete their organization as aforesaid, and with all powers and rights which the said Hannibal and St. Joseph Railroad had or could exercise under its said charter and the General Laws of this State. That an executive construction and managing committee on behalf of said Hannibal and St. Joseph Railroad Company was then

and there appointed and authorized to construct, maintain, manage and operate said Branch Road and empowered to procure subscriptions of stock from counties, townships and cities, and to that end to open books for subscription for that purpose, and to do all other acts lawful for said Hannibal and St. Joseph Railroad Company in the building, construction and maintenance of said Branch Railroad under its said charter and the laws of this State, a certified copy of which proceedings and resolutions of the Board of Directors of said Hannibal and St. Joseph Railroad Company were on the 5th day of July A. D. 1870, filed for record and recorded in the office of the Secretary of State of Missouri.

8. That afterwards, to-wit: on the 4th day of October, A. D. 1870, the County Court of Greene County by an order duly entered of record took and subscribed to the Hannibal and Joseph Railroad Company four thousand shares of the stock of said Company of the denomination of one hundred dollars each to the share amounting to four hundred thousand dollars to aid in the building of said Branch Road located in said County of Greene, which was to commence at Kansas City in Jackson County, Missouri, to intersect thereat with the Road theretofore called the Kansas City and Cameron Railroad, then a part of said Hannibal and St. Joseph Railroad, thence to be built through the Counties of Cass and Jackson by the way of Springfield in said County of Greene and thence in a southeasterly direction to the State line in the direction of Memphis, Tennessee, said Road to be built under the authority of an act to incorporate the Kansas City, Galveston and Lake Superior Railroad Company, approved February 9, 1857, and the acts amendatory thereof, and the act of March 21, 1868, to aid in the building of Branch Railroads in the State of Missouri, which said branch was called the Kansas City and Memphis Railroad.

9. That in payment of said subscription said County of Greene thereafter, to-wit, on the first day of August, 1871, executed its written obligations of that date called Greene County Bonds numbered from one to four hundred inclusive, with interest coupons thereto subjoined, each sealed with its corporate seal and signed by R. P. Mathews and Ralph Walker the then Justices of the County Court of Greene County and attested by A. Demuth the then Clerk of said County Court of

Greene County, and thereby in each of said bonds acknowledged itself indebted and bound to the Hannibal and St. Joseph Railroad Company or bearer in the sum of one thousand dollars, which sum said defendant in each of said Bonds promised to pay to said Company or bearer at the National Park Bank in the city of New York twenty years after date thereof together with interest thereon from said date at the rate of eight per cent. per anuum, which said interest was and is to be paid semi annually on the presentation and delivery at said Bank of the coupons thereto severally subjoined until payment in full of said principal sums. Said Bonds and each of them contained recitals therein, that they were issued under and pursuant to the order of the County Court of said County of Greene and in accordance with the acts of the legislature of the State of Missouri entitled an act to incorporate the Kansas City, Galveston and Lake Superior Railroad Company, approved February 9, 1857, and an act to amend an act entitled an act to incorporate the Kansas City, Galveston and Lake Superior Railroad Company, approved Feb. 9, 1857, and for other purposes, approved Feb. 13, 1864, and also an act to aid in the building of Branch Railroads in the State of Missouri, approved March 21, 1868.

10. That each of said bonds, except the number thereof, is as follows, to-wit:

UNITED STATES OF AMERICA,

County of Greene, State of Missouri.

No. 11. $1,000.

GREENE COUNTY BOND.

TWENTY YEARS.

Know all men by these presents, that the County of Greene acknowledges itself indebted and bound unto the Hannibal & St. Joseph Railroad Company or bearer, in the sum of one thousand dollars, which sum the County of Greene hereby promises to pay to said Company or bearer, at the National Park Bank in the City of New York, twenty years after the date of these presents, together with interest thereon from

the date hereof, at the rate of eight per cent. per annum, which interest shall be paid semi-annually on the presentation and delivery at said bank of the coupons hereto severally subjoined, until the payment in full of said principal sum.

This bond being issued under and pursuant to an order of the County Court of Greene County, State of Missouri, and in accordance with an act of the Legislature of the State of Missouri, entitled "an act to incorporate the Kansas City, Galveston and Lake Superior Railroad Company," approved February 9th, 1857, and an act to amend an act entitled "an act to incorporate the Kansas City, Galveston and Lake Superior Railroad Company, approved February 9th, 1857, and for other purposes," approved February 13th, 1864, and also an act entitled "an act to aid in the building of branch railroads in the State of Missouri," approved March 21st, 1868.

In witness whereof, the said County Court of Greene County have caused these presents to be signed by the justices and attested by the County Clerk, with the seal of said Court affixed, and the coupons hereto attached to be signed by the Treasurer of said County. Done at the city of Springfield, this 1st day of August, A. D. 1871.

R. P. MATHEWS,
[L. S.] RALPH WALKER, Justices.
Attest:
A. DEMUTH,
Clerk of the County Court.

11. That plaintiff is the owner and holder for value before maturity of the bonds and coupons mentioned in his petition, and that said coupons are all due and unpaid.

12. That each of said coupons is as follows:

SPRINGFIELD, GREENE COUNTY, MO., August 1, 1871.

The County of Greene, State of Missouri, acknowledges to owe the sum of forty dollars, payable to bearer on the 1st day of August, 1891, being interest due on bond No. 11, for $1,000. This coupon payable at the National Park Bank in the City of New York, State of New York.

JARED E. SMITH,
Treasurer of Greene County.

Upon the foregoing facts the Court found as a conclusion of law that the plaintiff was entitled to recover, and rendered judgment accordingly, to which finding and judgment of the Court the defendant excepted.

As none of the acts of the General Assembly of the State of Missouri, recited in said bonds, nor the act incorporating the Hannibal and St. Joseph Railroad Company [See Laws of Mo. 1847, page 156], confer authority on said Greene County to make a subscription to the Hannibal and St. Joseph Railroad Company, it follows that such authority must have been conferred, if at all, by virtue of said consolidation of the Kansas City and Cameron Railroad Company with the Hannibal and St. Joseph Railroad Company.

The defence to this suit is that the County Court of Greene County was not authorized by law to make the subscription in the name of said County of Greene to the capital stock of the Hannibal and St. Joseph Railroad Company, nor to issue the bonds of said county to pay such subscription.

The Plaintiff in error assigns the following for errors in the record and proceedings in the Court below in this cause:

1. That the Court below found as a conclusion of law that the special finding of facts in this cause constituted no defence to Plaintiff's right to recover.

2. That the judgment of the Court below was for the Plaintiff when it should have been for the Defendant.

3. That the Court below found as a conclusion of law, that the right to receive a subscription from Greene county, passed from the Kansas City and Cameron Railroad to the Hannibal and St. Joseph Railroad Company, by the consolidation of the two corporations under the law of 1867 referred to in the foregoing statement of the case.

4. That the Court below found as a conclusion of law that said right to receive from said Greene County a subscription to its stock, passed under the charter of the Kansas City, Galveston and Lake Superior Railroad Company after its consolidation with the Hannibal and St. Joseph Railroad Company to the Branch of said last named Railroad Company called the Kansas City and Memphis Railroad, after its establishment as an independent corporation under the act of March 21, 1868, before mentioned.

5. That the Court below found as a conclusion of law

that the said Branch of the Hannibal and St. Joseph Railroad Company, called the Kansas City and Memphis Railroad, after its establishment under the law of March 31, 1868, before mentioned, concerning Branch Railroads, was not subject to the 14th section of the 11th Article of the Constitution of Missouri, adopted in the year 1865.

6. That the Court below found as a conclusion of law that said Greene County could make the subscription before mentioned to the stock of the Hannibal and St. Josepn Railroad Company to aid in building the Kansas City and Memphis Railroad, without the assent of a majority of the resident voters of said County, as required by the law of 1861 hereinafter mentioned; and without the assent of a majority of two-thirds of the legal voters of said County as required by the 14th section of the 11th Article of the Constitution of Missouri adopted in the year 1865 and nereinafter mentioned.

POINTS AND AUTHORITIES.

I.

The right of the Kansas City and Cameron Railroad to receive a subscription to its capital stock from said Greene County, and the authority of the County Court of said county to make such subscription under the act incorporating said Kansas City, Galveston and Lake Superior Railroad Company, the same never having been exercised, became extinguished by the consolidation of said Company with the Hannibal and St. Joseph Railroad Company, and did not pass to the new Company by such consolidation.

Railroad Company vs. Georgia, 98 U. S., 359.
McMahan vs. Morrison, 16 Ind., 172.
Lauman vs. the Lebanon Valley R. Co., 30 Pa. St., 42.
Clearwater vs. Meredith, 1 Wall, 25.
Marsh vs. Fulton County, 10 Wall, 676.
Harshman vs. Bates County, 92 U. S., 569.
Floyd Acceptances, 7 Wall, 676.
The State ex. rel. Wilson vs. Garroutte, 67 Mo., 445, 462.
Tomlinson vs. Branch, 15 Wall, p. 460–464.

1. The privilege of a Railroad Company to receive subscriptions from a municipal corporation and the right of the

municipality to make the same, is a mere privilege and not a vested right or property in such corporation, until the subscription is actually made.

1 Dillon on Munic. Corp., sec. 42.
Union Pacific R. R. Co. vs. Davis County, 6 Kan., 256.
County of Dallas vs. McKenzie, 94 U. S., 660.
Aspinwall vs. County of Jo Daviess, 22 How, 364.
People vs. Coon, 25 Cal., 635.

2. A new Railroad Company formed by the consolidation of two or more existing Railroad Companies, takes only such rights, privileges and franchises of the merged Companies as are specially given by the legislative act authorizing such consolidation, since the transfer of such rights from one corporation to another can only be accomplished by legislative enactment, and not by contract or conveyance alone.

Field on Corp., secs 426 and 427.
Railroad Company vs. Georgia, 98 U. S., 359.
McMahan vs. Morrison, 16 Ind., 172.
Laumaa vs. Lebanon Valley Railroad Co., 30 Pa. St. 42.
Clearwater vs. Meredith, 1 Wall, 25.
Nugent vs. Supervisors, 19 Wall, 241.
Phila. & Wilm. Railroad Co. vs. Maryland, 10 How, 376.
State ex. rel. Wilson vs. Garroutte, 67 Mo., 445; 462 to 464.

3. The act under which these Railroads were consolidated makes no specific provision concerning the effect of such consolidation, nor what shall pass by it, or how it shall be effected. The language of the act is as follows:

"SEC. 2. It shall be lawful and competent for said Company to make such arrangement with any other Railroad Company to furnish equipments and to run and manage its Railroad as it may deem expedient and find necessary, or to lease the same, or to consolidate it with any other Company upon such terms as may be deemed just and proper."

Laws of Mo., 1867, page 143.

An examination of the cases in which this Court has determined that all the rights, privileges and franchises of two or more existing Railroad Companies, whether vested or not, passed to and became vested in a new corporation by virtue of a consolidation or merger of such Companies, will show that the law authorizing such consolidation especially provided

that such should be the effect of consolidation, thereby in legal effect transferring those rights to the new Company by legislative enactment.

We respectfully submit, then, that under the acts before recited, only the vested or property rights of the merged corporations could pass to the new Company, otherwise a corporation could be invested by the mere contract of consolidation, with privileges and franchises, against the common law rights of the citizens of a State, without legislative sanction.

II.

The act of the Legislature of Missouri authorizing branch Railroads, approved March 21, 1868, recited in the bonds sued on in this case, and under which the Kansas City and Memphis Railroad was made an independent corporation, was subject to the 14th section of the 11th article of the constitution of the State of Missouri, adopted in the year 1865, and said Kansas City and Memphis Railroad was prohibited from receiving aid from Greene County without the assent of two-thirds of the qualified voters of said County.

The language of said act of the General Assembly of March 21, 1868, before mentioned, is as follows:

SECTION 1. Any railroad company in this State authorized by law to build branches and wishing to avail themselves of the provisions of this act, shall by its board of directors pass, and cause to be entered upon its records, a resolution setting forth such desire, and designating the name under which such branch shall be built, its point of intersection with its main line and general course, a certified copy of which resolution shall be filed with the Secretary of State, after which they shall be governed by the provisions of this act.

SEC. 2. Whenever any such railroad company shall undertake the construction of a branch designated, as provided in the first section of this act, they shall receive donations or subscriptions to stock to aid in its construction in the name of such branch, which shall be expressed in the certificate of stock issued; the cost and expenses of constructing and operating such branch shall be kept separate and distinct from expenses on the main line. They may borrow money and issue bonds secured by mortgage on such branch road to aid in its construction, and in general, may operate, lease, sell or consolidate with any connecting road distinct and separate from their main line, and in any other way may manage or dispose of such branch as by law they may be authorized with reference to their main line and separate therefrom.

SEC. 3. Any branch road so constructed shall not be holden for any debt, lien or liability of the main line, nor shall the main line be holden for any debt, lien or liability of such branch. Any dividends or profits arising out of the business of such branch road shall be divided among the stockholders in such branch, and in all respects the interest of the stockholders in the branch shall be kept separate and distinct from the interests of the stockholders in the main line.

SEC. 4. The holders of stock in any railroad company which was subscribed in aid of the construction of a branch road according to the provisions of this act, shall have the same rights as other stockholders in the company in the choice of officers; but, in all matters directly and specially affecting the interests of such branch road the stockholders in such branch shall control, and for such purpose, the directors under their by laws may, or, on the petition of parties representing one-tenth of such stock, shall, call a meeting of the stockholders in such branch, setting forth the object of such meeting; and at any such meeting such stockholders may instruct the board of directors in all matters relating especially to their interests, and they shall be governed by such instructions, if not inconsistent with the laws of the State and the powers of such company.

SEC. 5. This act shall be in force and take effect from and after its passage.

Laws of Missouri, 1868, page 90.

The language of the 14th section of the 11th article of the constitution of Missouri, adopted in the year 1865, before mentioned, is as follows:

XIV. The General Assembly shall not authorize any County, City or Town to become a stockholder in or loan its credit to any Company, Association or Corporation, unless two-thirds of the qualified voters of such County, City or Town, at a regular or special election to be held therein, shall assent thereto.

3. The charter of the Kansas City, Galveston and Lake Superior Railroad Company, which contains the only grant of power relied upon to sustain the validity of the bonds sued on in this case, locates, defines and limits the main line of said Railroad as follows:

SEC. 7. Said Company shall have full power to survey, mark, locate, construct, maintain and operate a Railroad from the City of Kansas, in Jackson County, by the most direct and practicable route in the direction of Galveston, in the State of Texas, or to intersect any road or roads now being constructed or to be constructed by the States of Texas or Arkansas, or by any company or companies which are or may be chartered

by either or both of said States. Also to construct said Railroad North from the City of Kansas by the most direct and practicable route to the north boundary of the State in the direction of Fon Du Lac, on Lake Superior; and for that purpose may hold a strip of land not exceeding one hundred feet in width, with as many tracks as the said President and Directors may deem necessary; Provided, that in passing hills or valleys the said Company are authorized to extend said width in order to effect said object, and may also hold sufficient land for the erection of depots, warehouses and water stations, and may select such route as may be deemed most advantageous, and may extend branch Railroads to any point in any of the counties through which the said Railroad may be located.

4. The 13th section of said charter locates, defines and limits the Branch, afterwards established as an independent corporation under said law of 1868, and called the Kansas City and Memphis Railroad, for whose sole benefit this subscription was made, as follows:

SEC. 13. Said Company shall have full power to construct a branch railroad commencing at or near the City of Kansas, to any point on the southern boundary of the State the Directors may select, to connect with any roads leading to or in the direction of Memphis, in Tennessee, or Napoleon, in the State of Arkansas, and shall be governed in all respects by the provisions of this act in the construction and operation of said branch road.

5. Section 15 of said charter, conferring power on County Courts to subscribe to the stock of said Railroad Company, is as follows:

SEC. 15. It shall be lawful for the County Court of any county in which any part of the route of said Railroad or Branches may be, or any county adjacent thereto, to subscribe to the stock of the Company, or invest its three per cent. fund or other internal improvement fund belonging to the county, as stock in said road, and for the stock subscribed in behalf of the county may issue the bonds of the county to raise the funds to pay the same, and to take proper steps to protect the interest and credit of the County Court; may appoint an agent to represent the county, vote for it, and receive its dividends. Any incorporated city, town, or incorporated company may subscribe to the stock in said Railroad Company, and may appoint an agent to represent its interest, give its votes and receive its dividends; and may take proper steps to guard and protect the interests of such city, town or corporation.

Laws of Mo., 1856-7, page 166.

6. From the foregoing sections of the charter of the Kansas City, Galveston and Lake Superior Railroad Company, it

will be seen that the authority given by said charter to counties to subscribe to its stock, was authority to subscribe to the stock of the whole corporation, including the main line and all its branches, and not to the stock of one particular branch alone.

7. It will also be seen by an examination of said charter that no branch of said Railroad was authorized to become a distinct and separate corporation from the main road, but that said main line and all its branches constituted one Company; and that a stockholder in said Company would derive benefit not only from the main line, but from all its branches and connections.

8. It must be conceded that under the law of 1868, and the subscription of Greene County in this case, and the special finding of facts by the Court below in this case, Greene County would only be entitled to stock in the Branch Railroad called the Kansas City and Memphis Railroad; and not to stock in the Kansas City, Galveston and Lake Superior Railroad Company; nor in the Hannibal and St. Joseph Railroad Company; nor in the new corporation formed from the consolidation of the two last named Railroads.

State ex. rel. vs. Greene County et al, 54 Mo., 552, 563 and 564.

State ex. rel. Wilson vs. Garroutte, 67 Mo., 465.

Now, how was the Kansas City and Memphis Railroad Railroad made a separate and distinct corporation if not by the act of 1868 before mentioned? It must either have derived its authority to exist as a separate and independent corporation, having separate stock, separate stockholders, a separate management, separate property, and separate liabilities, by virtue of said act of 1868; or it exists as such corporation without the exercise of legislative sanction. And if established by said act of 1868, how can it be exempt from the provisions of the Constitution of the State then in force? Or how could such subscription be legally made without the assent of two-thirds of the qualified voters of the county?

III.

Under Section 2 of an act of the General Assembly of Missouri entitled "an act supplemental to an act entitled an act to authorize the formation of Railroad Associations and to

regulate the same, approved December 13, 1855," approved March 23, 1861, said Greene County was prohibited from subscribing to the stock of the Hannibal and St. Joseph Railroad Company for any purpose unless the same had been voted for by a majority of the resident voters of said County.

See Laws of Missouri 1860 1, page 60.

Section 2 of said act last mentioned is as follows:

"SECTION 2. It shall not be lawful for the County Court of any County to subscribe to the capital stock of any Railroad Company, unless the same has been voted for by a majority of the resident voters who shall vote at such election under the provisions of this act."

Opinion of Sherwood, Chief Justice, in State ex rel. Wilson vs. Garroutte, 67 Mo., 454.

State vs. Dallas County, 72 Mo., 329.

It is not claimed that any vote was ever taken in said Greene County on the question of making the subscription before mentioned to the Hannibal and St. Joseph Railroad Company.

IV.

The Kansas City and Memphis Railroad having been organized under the law of 1868 as an independent corporation, was not entitled to receive aid from Greene County under the power given in the charter of the Kansas City, Galveston and Lake Superior Railroad Company.

1. Under the act of 1868 before mentioned, the new corporation formed by the consolidation of the Kansas City, Galveston and Lake Superior Railroad Company with the Hannibal and St. Joseph Railroad Company, was divided into two separate and independent corporations; one of which comprises the original Hannibal and St. Joseph Railroad Company and the Kansas City, Galveston and Lake Superior Railroad Company and all its branches except one; the other is composed of said Branch of the Kansas City, Galveston and Lake Superior Railroad Company, and called the Kansas City and Memphis Railroad.

2. We respectfully submit that the original grant of power to subscribe to the Kansas City, Galveston and Lake Superior Railroad Company, or the new Company formed by the consolidation of said Company with the Hannibal and St. Joseph Railroad Company, did not, and could not authorize a

subscription by Greene County to the Kansas City and Memphis Railroad, an entirely different corporation from either of the merged corporations or the new Company formed by the consolidation.

3. The case of Marsh vs. Fulton County, 10 Wall, 676, seems to us exactly in point on the question now under consideration.

In that case Fulton County in the State of Illinois voted a subscription of $75,000 to the Mississippi and Wabash Railroad Company, and the Board of Supervisors of said County ordered its Clerk to make said subscription, and issue Bonds of said County to be delivered on performance of certain conditions by said Company.

Subsequently under an act of the Legislature of Illinois, the line of the Mississippi and Wabash Railroad was divided into three divisions, each having separate stockholders and separate stock.

The Clerk of said Fulton County under said authority before mentioned, subscribed for said County to the Central Division of said Railroad.

Mr. Justice Field speaking for the Court in that case says:

"The only subscription authorized by the voters of Fulton County was that to the Mississippi and Wabash Railroad Company, and one to the Petersburgh and Springfield Company. The Central Division of the Mississippi and Wabash Railroad Company was a different corporation from the original Company. It has been so held by the Supreme Court of Illinois in a case involving the consideration of a portion of the bonds in suit and the remaining sixty thousand dollars of bonds of the original subscription.

"The amendatory act of 1857 dividing the Road into three divisions and subjecting each division to the control and management of a different board, clothed with all the powers of the original board so far as the division was concerned worked a fundamental change in the character of the original corporation and created three distinct corporations in its place. A subscription to a Company whose charter provided for a continuous line of Railroad of two hundred and thirty miles across the entire State was voted by the electors of Fulton County; not a subscription to a Company whose line of Road is less than sixty miles in extent, and which disconnected from other portions of the original line would be of comparatively little value."

Applying the same principles and reasoning to this case, it may with equal force be said: That the only subscription of

Greene County authorized by the charter of the Kansas City Galveston and Lake Superior Railroad, was to the stock of the Kansas City, Galveston and Lake Superior Railroad Company. The branch called the Kansas City and Memphis Railroad was a different corporation from the original Company or the new Company created by the consolidation. It has been twice so held by the Supreme Court of Missouri in cases involving the consideration of said bonds. [See State ex. rel. Attorney General vs. Greene County et. al., 54 Mo, 552, and State ex rel. Wilson vs. Garroutte, 67 Mo., 465.

The act of 1868 authorizing Branch Railroads in Missouri to be organized as independent corporations, with stock, stockholders and rights and liabilities separate and distinct from the main line, and the action of the Company in this case created two distinct corporations where but one existed before.

A subscription to a Company whose charter provided for a continous line of railroad of more than four hundred miles, across the entire State, with numerous and important branches and connections, reaching from Lake Superior to the Gulf of Mexico, was authorized by the Legislature in the charter conferring the power to make the subscription;—not a Company composed merely of one of its branches which might be of comparatively little value.

The two cases are entirely parallel in principle. The reasoning in the case of Marsh vs. Fulton County, *supra*, is unanswerable and conclusive, and must control this case on the point under consideration, and defeat the Plaintiff's recovery.

If either of the four propositions before mentioned are correct in law, then the bonds in question are invalid for want of power in the County Court of Greene County to issue them.

We respectfully submit that in principle as well as on authority of the cases cited, the law is correctly stated in each of said propositions, and that said bonds are void for want of authority to issue the same.

V.

Where bonds are void for want of authority to issue the same, there can be no innocent holder.

County of Dallas vs. McKenzie, 94 U. S., 660.

McClure vs. Township of Oxford, 94 U. S., 429.

Township of East Oakland vs. Skinner, 94 U. S., 255.
Loan Association vs. Topeka, 20 Wall, 655.
Steines vs. Franklin Co., 48 Mo., 167.
State vs. Curators State University, 57 Mo., 178.
Marsh vs. Fulton County, 10 Wall, 676.
Aspinwall vs. Commissioners of County of Daviess, 22 How, 364.
State ex. rel. Wilson vs. Garroutte, 67 Mo., 445.

VI.

But it is said that the case of State ex. rel. Att'y Gen., vs. Greene County et. al., 54 Mo., 540, settled all the questions concerning the validity of the Greene County Bonds, and whether right or wrong, their validity cannot now be changed or questioned.

1. With regard to the case last mentioned, it is not now even claimed that the conclusion reached by the majority of the Court is the law, either upon principle or upon the authority of the adjudicated cases at the time it was announced; but it is contended that as it was the first decision of the Supreme Court of Missouri upon the validity of the bonds issued in the name of Greene County to the Hannibal and St. Joseph Railroad Company, it fixed the legal *status* of all said bonds then issued, for all time.

2. It is also to be observed that the case of State ex. rel. Att'y Gen. vs. Greene County et. al., was a case disposed of on a demurer to the answer of defendants in a proceeding to restrain the collection of a tax, and the levy of further taxes in Greene County for the payment of the bonds and interest on the same, and not on the trial of the merits of the case.

And when the majority of the Court came to the conclusion that the validity of the bonds should be sustained on the case made by the pleadings, instead of reversing the case and remanding the same for further proceedings on an answer to its merits in the trial court, the bill was dismissed and final judgment rendered in the Supreme Court, thereby never giving an opportunity for an answer to the bill and a trial of the case on its merits.

3. Besides the case of State ex rel. Attorney General vs. Greene County et al. *supra*, was expressly overruled by the Court rendering it, in the later case of State ex rel. Wilson vs.

Garroutte *supra*, because not in harmony with the law, and the rules established by the adjudicated cases.

4. Although this Court has heretofore held that after having followed the decisions of a State Court, it will not change merely because the State Court has changed; yet on a question concerning negotiable commercial paper, belonging to the domain of general jurisprudence, is it to be said that this Court, when the validity of Bonds issued by a County come before it for the first time, must follow an erroneous decision of the State Court since overruled, simply because it was the first decision rendered upon the subject?

5. The question of the validity of this issue of Bonds is now before this Court for adjudication for the first time. The State Court has decided in one case that the Bonds are valid, and in a later case that they are invalid. In view of this conflict of opinions in the State Court, and the further circumstance that the question involved is one of general jurisprudence, we respectfully submit that its determination should be controlled by what this Court believes to be the law, regardless of former conflicting opinions of the State Court on the same question.

P. T. SIMMONS, *Pros. Att'y of Greene Co., Mo., and*
CHAS. W. THRASHER, *and*
HENRY C. YOUNG, *for Plaintiff in Error.*

109-102

OFFICE SUPREME COURT U. S.
FILED
AUG 18 1883
JAMES H. McKENNEY, Clerk.

IN THE

Supreme Court of the United States,

AT THE OCTOBER TERM, A. D. 1883.

No......

THE COUNTY OF GREENE, Plaintiff in Error,

vs.

JOHN CONNESS, Defendant in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

STATEMENT, JOINDER IN ERROR, AND BRIEF AND ARGUMENT

FOR DEFENDANT IN ERROR.

JAMES S. BOTSFORD,
MARCUS T. C. WILLIAMS,
ROBERT G. INGERSOLL,
For Defendant in Error.

H. N. FAREY & CO. PRINTERS JOURNAL BUILDING, KANSAS CITY.

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FOR DEFENDANT IN ERROR.

STATEMENT.

I.

This action was brought to the November Term, A. D. 1882, of the Circuit Court of the United States for the Eastern Division of the Western District of Missouri, by John Conness, a citizen of the State of Massachusetts, as plaintiff, against the County of Greene, a municipal corporation of the State of

Missouri, as defendant, to recover the amount due upon six hundred and eighty-six semi-annual interest coupons, maturing respectively on the first days of February and August in the year 1876 and each and every year thereafter to the first day of August, 1882, inclusive, and detached from forty-nine bonds, of one thousand dollars each, issued by the defendant on the first day of August, 1871, in part payment of its subscription to the capital stock of the Hannibal and St. Joseph Railroad Company.

The cause came on regularly for trial at said November term of said court, before the Honorable Arnold Krekel, judge of said court, a jury being waived by written stipulation of the parties, and was heard on the pleadings and on the evidence produced by plaintiff below. Judgment was rendered in favor of plaintiff below in the sum of thirty-three thousand two hundred and ninety-eight and $\frac{44}{100}$ dollars, the amount found due upon the interest coupons mentioned in his petition. At the time of the rendition of this judgment, the court made the following special finding of facts, and conclusion of law, which was signed, filed and made a part of the record:

FINDING OF FACTS.

That the Kansas City, Galveston and Lake Superior Railroad Company was incorporated and organized under and by virtue of an act of the general assembly of the State of Missouri, approved February ninth, 1857, and entitled "An act to incorporate the Kansas City, Galveston and Lake Superior Railroad Company."

That by the provisions of said act, said corporation had full power to construct a branch railroad, commencing at or near the City of Kansas, to any point on the southern boundary line of the State of Missouri the directors thereof should select, to connect with any road or roads leading in the direction of the city of Memphis, in the State of Tennessee, or Napoleon, in the State of Arkansas.

That it should be lawful for any county court of any county in which any part of the route of said railroad or branches may be, or any county adjacent thereto, to subscribe to the stock of said company, and for the stock subscribed in behalf of each county thereto, said county courts were authorized to issue bonds of such county to raise funds to pay the same, and to authorize and appoint an agent to subscribe for said stock to said railroad in the name of and on behalf of said county.

That under and by virtue of the provisions of an act of the general assembly of the State of Missouri, approved February thirteenth, 1864, amendatory of said act of February ninth, 1857, the name of said railroad corporation was changed to that of the Kansas City and Cameron Railroad Company.

That under the provisions of an act of the general assembly of the State of Missouri, approved March eleventh, 1867, entitled "An act to amend an act entitled an act to incorporate the Kansas City, Galveston and Lake Superior Railroad Company, approved February ninth, 1857," the said corporation, then known as the Kansas City and Cameron Railroad Company, on the twenty-first day of February, in the year 1870, was consolidated with the Hannibal and St. Joseph Railroad Company, and all the rights, privileges, franchises and property of said Kansas City and Cameron Railroad Company, were by said consolidation transferred to the Hannibal and St. Joseph Railroad Company, which then and there-

by became the owner of and possessed of the same.

That the said Kansas City and Cameron Railroad Company, prior to its said consolidation, to-wit: on the third day of October, A. D. 1869, by a resolution adopted by the board of directors of said company, at a meeting held in Kansas City, Missouri, in pursuance of its by-laws, resolved that the said Kansas City and Cameron Railroad Company was desirous of availing itself of the provisions of the general laws of the state of Missouri authorizing railroad companies to construct branch railroads, approved March twenty-first, 1868, under the authority of its charter aforesaid, the name of said branch railroad to be the Kansas City and Memphis Railroad, which said branch road should commence at the City of Kansas, in Jackson county, Missouri, to intersect the main line thereat, thence to be built through the counties of Jackson and Cass, in a general southeasterly course, to the southern boundary of the State of Missouri, in the direction of Memphis, in the State of Tennessee, as perscribed in section thirteen of said charter, and that in pursuance of said resolution a board of directors for said Kansas City and Memphis Railroad were then and there appointed, with all the powers and rights of said Kansas City and Cameron Railroad Company, to take all necessary steps to complete their organization, to procure subscriptions of stock, and to that end to open books for subscription, and to do all other acts lawful for said Kansas City and Cameron Railroad Company, in the building and construction of said branch railroad; and that a duly certified copy of said resolutions and proceedings of said board of directors of said Kansas City and Cameron Railroad Company were on the twenty-fourth day of November, A. D. 1869, duly filed for record and recorded in the office of the Secretary of the State of Missouri.

That after said consolidation of said Kansas City

and Cameron Railroad Company with said Hannibal and St. Joseph Railroad Company, to wit: on the twentieth day of June, 1870, said Hannibal and St. Joseph Railroad Company, by a resolution adopted by its board of directors, at a meeting held in the city of Boston, in the State of Massachusetts, approved and confirmed said resolutions of said board of directors of said Kansas City and Cameron Railroad Company, and then and there resolved that the said Hannibal and St. Joseph Railroad Company was desirous of availing itself of the provisions of the act to aid in building branch railroads in the State of Missouri, approved March twenty-first, 1868, under the authority of its charter, the act to incorporate the Kansas City, Galveston and Lake Superior Railroad Company, aforesaid, said authority being conveyed in section thirteen of said act, and the act amendatory thereof, approved February thirteenth, 1864, the name of said branch railroad to be the Kansas City and Memphis Railroad, which said branch road should commence at said Kansas City, to intersect with the main line thereat, thence to be built through the counties of Jackson and Cass, in a generally southeasterly course to the southern boundary line of the State of Missouri, in the direction of Memphis, Tennessee, as prescribed in section thirteen of the act incorporating the Kansas City, Galveston and Lake Superior Railroad Company, approved February ninth, 1857, and the act amendatory thereto, approved February thirteenth, 1864, said act being the charter of said company, and that in pursuance of said resolution said board of directors of said Kansas City and Memphis Railroad were then and there authorized by the board of directors of said Hannibal and St. Joseph Railroad Company to act as such board of directors of such branch railroad, with all the powers to take all necessary steps to complete their organization as aforesaid, and with all powers and rights

which the said Hannibal and St. Joseph Railroad had or could exercise under its said charter and the general laws of this state.

That an executive, construction and managing committee on behalf of said Hannibal and St. Joseph Railroad Company was then and there appointed and authorized to construct, maintain, manage and operate said branch road, and empowered to procure subscriptions of stock from counties, townships and cities, and to that end to open books for subscription for that purpose, and to do all other acts lawful for said Hannibal and St. Joseph Railroad Company in the building, construction and maintenance of said branch railroad, under its said charter and the laws of this state, a certified copy of which proceedings and resolutions of the board of directors of said Hannibal and St. Joseph Railroad Company were, on the fifth day of July, A. D. 1870, filed for record and recorded in the office of the Secretary of State of Missouri.

That afterward, to-wit: on the fourth day of October, A. D. 1870, the county court of Greene county, by an order duly entered of record, took and subscribed to the Hannibal and St. Joseph Railroad Company four thousand shares of the stock of said company, of the denomination of one hundred dollars each to the share, amounting to four hundred thousand dollars, to aid in the building of said branch road, located in said county of Greene, which was to commence at Kansas City, in Jackson county, Missouri, to intersect thereat with the road theretofore called the Kansas City and Cameron Railroad, then a part of the said Hannibal and St. Joseph Railroad, thence to be built through the counties of Cass and Jackson, by the way of Springfield, in said county of Greene, and thence in a southeasterly direction to the state line, in the direction of Memphis, Tennessee, said road to be built under the authority of an act to incorporate the Kansas City, Galveston and Lake

Superior Railroad Company, approved February ninth, 1857, and the acts amendatory thereof, and the act of March twenty-first, 1868, to aid in the building of branch railroads in the State of Missouri, which said branch was called the Kansas City and Memphis Railroad.

That in payment of said subscription, said county of Greene thereafter, to-wit: on the first day of August, 1871, executed its written obligations of that date, called Greene county bonds, numbered from one to four hundred inclusive, with interest coupons there to subjoined, each sealed with its corporate seal and signed by R. P. Mathews and Ralph Walker, the then justices of the county court of Greene county, and attested by A. Demuth, the then clerk of said county court of Greene county, and thereby in each of said bonds acknowledged itself indebted and bound to the Hannibal and St. Joseph Railroad Company, or bearer, in the sum of one thousand dollars, which sum said defendant in each of said bonds promised to pay to said company, or bearer, at the National Park Bank, in the city of New York, twenty years after date thereof, together with interest thereon from said date at the rate of eight per cent per annum, which said interest was and is to be paid semi-annually, on the presentation and delivery at said bank of the coupons thereto severally subjoined, until payment in full of said principal sums. Said bonds and each of them contained recitals therein that they were issued under and pursuant to the order of the county court of said county of Greene, and in accordance with the acts of the legislature of the State of Missouri, entitled "An act to incorporate the Kansas City, Galveston and Lake Superior Railroad Company," approved February ninth, 1857, and "An act to amend an act entitled an act to incorporate the Kansas City, Galveston and Lake Superior Railroad Company, approved February

ninth, 1857, and for other purposes," approved February thirteenth, 1864, and also "An act to aid in the building of branch railroads in the State of Missouri," approved March twenty-first, 1868.

That each of said bonds, except the number thereof, is as follows, to-wit:

UNITED STATES OF AMERICA,

County of Greene, State of Misiouri.

No. 11. $1,000

GREENE COUNTY BOND.

TWENTY YEARS.

Know all men by these presents, that the County of Greene acknowledges itself indebted and bound unto the Hannibal & St. Joseph Railroad Company, or bearer, in the sum of one thousand dollars, which sum the County of Greene hereby promises to pay to said company, or bearer, at the National Park Bank, in the City of New York, twenty years after the date of these presents, together with interest thereon from the date hereof at the rate of eight per cent per annum, which interest shall be paid semi-annually, on the presentation and delivery at said bank of the coupons hereto severally subjoined, until the payment in full of said principal sum.

This bond being issued under and pursuant to an order of the County Court of Greene County, State of Missouri, and in accordance with an act of the Legislature of the State of Missouri entitled "An Act to Incorporate the Kansas City, Galveston and Lake Superior Railroad Company," approved February 9th, 1857, and an act to amend an act entitled "An Act to Incorporate the Kansas City, Galveston and Lake Superior Railroad Company, approved February 9th, 1857, and for other purposes," approved February 13th, 1864, and also an act entitled "An Act to Aid in the building of Branch Railroads in the State of Missouri," approved March 21st 1868.

In witness whereof, the said County Court of Greene County have caused these presents to be signed by the Justices and attested by the County Clerk, with the seal of said County affixed, and the coupons hereto attached to be signed by the Treasnrer of said County.

Done at the city of Springfield, this 1st day of August, A. D. 1871.

R. P. MATHEWS,)
[L. S.] RALPH WALKER,) *Justices.*

Attest: A. DEMUTH,
Clerk of the County Court.

That plaintiff is the owner and holder for value, before maturity, of the bonds and coupons mentioned in his petition, and that the said coupons are all due and unpaid. Each of said coupons is as follows:

SPRINGFIELD, GREENE COUNTY, MO., August 1st, 1871.

The County of Greene, State of Missouri, acknowledges to owe the sum of forty dollars, payable to bearer, on the first day of August, 1891, being the interest due on bond No. 11, for 1,000 dollars. This coupon payable at the National Park Bank, in the City of New York, State of New York.

JARED E. SMITH,
Treasurer of Greene County.

CONCLUSION OF LAW.

The court finds, as a conclusion of law, that the facts thus specially found constitute no defense to plaintiff's action, and that plaintiff is entitled to recover herein, to which finding the defendant excepted, and the court thereupon ordered judgment for the plaintiff.

There is no bill of exceptions in the case, and the evidence upon which the foregoing finding of facts is based is not preserved in the record.

II.

The material parts of the acts of the general assembly of the State of Missouri, by authority of which it was found by the trial court the bonds of defendant were issued, so far as they relate to this controversy, are as follows:

INCORPORATION.

AN ACT to incorporate the Kansas City, Galveston and Lake Superior Railroad Company.

§ 1. That a company is hereby incorporated, to be called the Kansas City, Galveston and Lake Superior Railroad Company, the stock whereof shall be six millions of dollars, to be divided into shares of one hundred dollars each, the holders whereof, their successors or assigns, shall constitute and be a body corporate and politic, in law and in fact, by the name and style aforesaid, and by that name shall have perpetual succession, may sue and be sued, plead and be impleaded, defend and be defended against, may make and use a common seal, and break and change the same, and shall be able, in law and equity, to make contracts; may make, hold, use, possess and enjoy the fee simple, or other titles, in and to any real estate, and may sell and dispose of the same; may make by-laws, rules and regulations proper for carrying into effect the provisions of this act, not repugnant to the constitution or laws of the United States, or of this state, and shall have the usual and necessary powers of corporation for such purposes.

§ 7. Said company shall have full power to survey, mark, locate, construct, maintain, and operate a railroad from the City of Kansas, in Jackson county, by the most direct and practicable route in the direc-

tion of Galveston, in the State of Texas, or to intersect any road or roads now being constructed, or to be constructed, by the States of Texas or Arkansas, or by any company or companies, which are or may be chartered by either or both of said states; also, to construct said railroad north, from the City of Kansas, or from the north bank of the Missouri river, opposite said City of Kansas, by the most direct and practicable route to the north boundary of the state, in the direction of Fond du Lac, on Lake Superior; and for that purpose may hold a strip of land not exceeding one hundred feet in width, with as many tracks as the said president and directors may deem necessary.

§ 13. Said company shall have full power to construct a branch railroad, commencing at or near the City of Kansas, to any point on the southern boundary of the state the directors may select, to connect with any road or roads leading to, or in the direction of, the city of Memphis, in Tennessee, or Napoleon, in the State of Arkansas, and shall be governed, in all respects, by the provisions of this act in the construction and operation of said branch road.

§ 15. It shall be lawful for the county court of any county, in which any part of the route of said railroad or branches may be, or any county adjacent thereto, to subscribe to the stock of the company or invest its three per cent fund or other internal improvement fund, belonging to the county, as stock in said road, and for the stock subscribed in behalf of the county may issue the bonds of the county to raise the funds to pay the same, and to take proper steps to protect the interest and credit of the county court; may appoint an agent to represent the county, vote for it, and receive its dividends. Any incorporated city, town, or incorporated company, may subscribe to the stock in said railroad company, and appoint an agent to represent its interest, give its

votes, and receive its dividends; and may take proper steps to guard and protect the interests of such city, town or corporation.

This act to take effect, and be in force from and after its passage.

Approved February 9, 1857.

Laws of Missouri, 1856-7, pp. 162-66.

Change of Corporate Name.

AN ACT to amend an act entitled "an act to incorporate the Kansas City, Galveston and Lake Superior Railroad Company," approved February 9, 1857, and for other purposes.

§ 2. It shall be competent for the Board of directors of said railroad company at any time to change the name of said company, and such change of name shall in no wise affect the rights or interests of any party or parties under the charter of said company or in pursuance of the acts of said company.

Approved February 13, 1864.

Laws of Missouri, 1863-4, p. 481.

Consolidation.

AN ACT to amend an act entitled "an act to incorporate the Kansas City, Galveston and Lake Superior Railroad Company," approved February 9, 1857.

Section one recites that said railroad company is then known as the Kansas City and Cameron Railroad Company.

§ 2. It shall be lawful and competent for said company to make such arrangement with any other railroad company to furnish equipments, and to run and manage its railroad, as it may deem expedient

and find necessary, or to lease the same, or to consolidate it with any other company upon such terms as may be deemed just and proper.

Approved March 11, 1867.

Laws of Missouri, 1867, p. 143.

To reverse the judgment of the court below, defendant Greene county sues out its writ of error to this court, and by stipulation in writing between the parties, filed and made a part of the record, this action is submitted on the printed record, briefs and arguments of counsel, under rule twenty of this court.

In the assignment of errors by plaintiff in error in this court, the third, fourth, fifth and sixth assignments thereof are not correct, and are not sustained by the record. The court made no findings as conclusions of law as therein stated. The only conclusions of law, found by the court, were that the facts specially found in the case constituted no defence to the right of recovery on the coupons, and that the plaintiff below was entitled to recover thereon.

JOINDER IN ERROR.

Now comes the defendant in error and says there is no error in the record, and that the judgment of said circuit court in his favor ought, in all things, to be affirmed.

JAMES. S. BOTSFORD,
MARCUS T. C. WILLIAMS,
ROBERT G. INGERSOLL,
Attorneys for Defendant in Error.

ARGUMENT.

POINTS OF FACT.

The findings of the trial court conclusively establish the following propositions of fact:

First. The organization of the Kansas City, Galveston and Lake Superior Railroad Company, under its charter of February 9th, 1857.

Second. The change of its corporate name to that of the Kansas City and Cameron Railroad Company, under the act of February 13th, 1864.

Third. The consolidation of the company, under the latter name, with the Hannibal and St. Joseph Railroad Company, under the act of March 11th, 1867; by which consolidation all the rights, privileges, franchises and property of the Kansas City and Cameron Railroad Company were transferred to and vested in the Hannibal and St. Joseph Railroad Company, which then and thereby became the owner and possessed of the same.

Fourth. The authorization of the building of the branch railroad, known as the Kansas City and Memphis Railroad, by said Kansas City and Cameron Railroad Company, prior to its consolidation, under the authority of section thirteen of its charter, and the act to aid in building branch railroads of March 21st, 1868.

Fifth. The approval and confirmation by the Hannibal and St. Joseph Railroad Company, after the consolidation, of the resolution to build said branch railroad, and the appointment of an executive, construction and managing committee on behalf of said Hannibal and St. Joseph Railroad Company, with full authority and power to procure subscriptions of stock from counties, townships and cities, and to open books for that purpose.

Sixth. The subscription of the county court of Greene county, by its order duly entered of record, to the capital stock of said Hannibal and St. Joseph Railroad Company, to aid in building said branch railroad, *then located in said county of Greene*, and the execution and delivery of the bonds and coupons in controversy in part payment thereof.

Seventh. That defendant in error is the owner and holder for value, before maturity, of said bonds and coupons, and that the coupons sued on are severally due and unpaid.

POINTS OF LAW.

There is but a single question of law in this case: Are the facts found sufficient to support the judgment? If anything in law can be regarded as settled by judicial determination, it would seem that the prior decisions of this court, and of the Supreme Court of Missouri up to the year 1877, conclusively answer the question in favor of the judgment. The

specific objections to the validity of the bonds in controversy, urged by counsel for plaintiff in error, have been decided adversely, and all and each of them repeatedly over-ruled. A statement of the principles and a citation of the authorities upon which they are based, and by which the bonds in controversy must be upheld as valid and binding obligations of the county, satisfy the requirements of our duty as counsel for the defendant in error. The labor of argument has been rendered unnecessary by the able and exhaustive decisions of this court and of the Supreme Court of Missouri on the questions directly involved in this record.

I.

The bonds and coupons in controversy are negotiable commercial instruments. The defendant in error is a bona-fide holder for value, before maturity. The bonds purport to be issued under and pursuant to an order of the county court of Greene county, duly entered of record, and in accordance with certain acts of the legislature of the State of Missouri therein recited. The defence attempted to be made by the answer of plaintiff in error is that they were issued without the assent or vote of two-thirds of the legal voters of the county. There was no proof of this defence offered or in evidence, and there is no finding of the court that the vote was not had and the assent of the voters given to the subscription. The bonds and coupons are *prima facie* the obligations of the

county, and the burden of proof is upon it to show that the conditions were not complied with.

Lincoln v. Iron Co., 103 U. S., 416.
Flagg v. City of Palmyra, 33 Mo., 450.
Smith v. County of Clark, 54 Mo., 75.

II.

But if the plaintiff in error had proved that no vote was taken, and the record showed that fact, still the bonds were valid and the judgment must be affirmed.

Section fifteen of the original charter of the company, granted in 1857, contained ample authority for the subscription by Greene county to the capital stock of that company, and that power remained unimpaired by the acts of the general assembly of January 14th, 1860, and of March 21st, 1861, and by Sec. XIV. of Article XI. of the Constitution of the State of Missouri, adopted in 1865.

(1871) *State v. Macon County*, 41 Mo., 453.
(1871) *Kansas City, St. Joe & Council Bluffs R. R. Co. v. Nodaway County Court*, 47 Mo., 349.
(1873) *State v. Saline County Court*, 51 Mo., 371.
(1873) *State v. Sullivan County Court*, 51 Mo., 530.
(1873) *Smith v. Clark County*, 54 Mo., 68.
(1874) *State, ex rel., v. Greene County*, 54 Mo., 558.
(1876) *County of Callaway v. Foster*, 93 U. S., 570.
(1876) *County of Scotland v. Thomas*, 94 U. S., 688.
(1877) *County of Henry v. Nicholay*, 95 U. S., 619.

(1877) *County of Ray v. Vansycle*, 96 U. S., 684.
(1877) *County of Macon v. Shores*, 97 U. S., 278.
(1878) *County of Schuyler v. Thomas*, 98 U. S., 173.
(1879) *County of Cass v. Gillett*, 100 U. S., 592.
(1881) *Louisiana v. Taylor*, 105 U. S., 458.
(1881) *County of Ralls v. Douglass*, 105 U. S., 731.

III.

The amendatory act of March 11th, 1867, authorizing the company to consolidate its railroad with any other company upon such terms as might be deemed just and proper, was a valid and lawful exercise of legislative authority, as an amendment of the original charter, authorized by the constitution of the State of Missouri then in force, and the consolidation effected thereunder, with the Hannibal and St. Joseph Railroad Company, transferred to the latter company all the rights, privileges and franchises of the former company.

State v. Cape Girardeau & State Line R. R., 48 Mo., 468.
State, ex rel., v. Greene County, 54 Mo., 551.
Daniels v. St. L., K. C. & N. R'y Co., 62 Mo., 47.
County of Callaway v. Foster, 93 U. S., 567.
County of Scotland v. Thomas, 94 U. S., 689.
County of Henry v. Nicholay, 95 U. S., 624.
County of Schuyler v. Thomas, 98 U. S., 173.
Wilson v. Salamanca, 99 U. S., 504.

IV.

The power to build the branch road being expressly conferred on the parent company by its original charter; and authority being expressly granted to the county court of any county in which any part of the route of said railroad or branches may be to subscribe stock to the company and to issue bonds to aid in the construction thereof; and the parent company having declared its intention to build, and authorized the construction and taken the necessary measures to organize, locate and build said branch; and having thereafter effected a consolidation, under legislative authority, with the Hannibal and St. Joseph Railroad Company, by which the power to build said branch road and the right to receive county subscriptions for that purpose passed to and became vested in said last named company, the subscription of Greene county to its capital stock and the issue of the bonds in controversy in aid of said branch road were lawful and binding acts, under the powers contained in the original charter, and did not depend for their validity on the act of March 21st, 1868, authorizing the building of branch railroads, and a vote of the people was not necessary as a precedent condition to their validity.

State, ex rel., v. Greene County, 54 Mo., 550.

And the recital in the bonds that they were issued in accordance with that act is surplusage, and does

not estop the bona-fide holder from showing the true legislative authority.

Smith v. Clark County, 54 Mo., 71.
Commissioners v. January, 94 U. S., 205.

V.

But even if the Kansas City and Memphis branch railroad was projected, and the organization for its construction had, under the act of March 21st, 1868, as well as under the authority of its original charter, as recited in the bonds in controversy, the constitutional prohibition, against any county becoming a stockholder in any corporation unless two-thirds of the qualified voters thereof shall assent thereto, does not apply to branch railroads built under that act, and did not prohibit the subscription to the stock of the company, or the issuance of the bonds to raise funds to pay the same.

State, ex rel., v. Greene County, 54 Mo., 550.
County of Henry v. Nicholay, 95 U. S., 625.
County of Cass v. Gillett, 100 U. S., 590.

VI.

The case at bar is stronger in favor of the validity of the bonds than any of the foregoing cases.

The findings show that the construction of the Kansas City and Memphis branch railroad was

authorized by a resolution of the board of directors of the Kansas City, Galveston and Lake Superior Railroad Company, prior to its consolidation, and a board of directors for said branch railroad appointed to build the same and to procure subscriptions of stock for that purpose. The findings further show the consolidation, and that thereby all the rights, privileges, franchises and property of said Kansas City and Cameron Railroad Company were transferred to the Hannibal and St. Joseph Railroad Company. The findings further show that after said consolidation the Hannibal and St. Joseph Railroad Company ratified and approved of the building of said branch railroad, and authorized and appointed a committee, for and on behalf of the parent company, to construct and operate said branch, and empowered said committee to procure subscriptions of stock from counties, townships and cities, and to that end to open books of subscription for that purpose. The findings further show a subscription duly made by the county court of Greene county to the capital stock of the consolidated company, to aid in the building of said branch railroad, THEN LOCATED IN SAID COUNTY OF GREENE, and the issue of the bonds in controversy in payment of said subscription.

In so far as the action of the original or the consolidated company, or of the county court of Greene county, are concerned, there was a full and substantial compliance with the requirements of the law, as contained in the original act of incorporation, or the

acts amendatory thereof, or of the general law of the state as embodied in the act to aid in building branch railroads in Missouri, approved March 21st, 1868. And this authority, ample in its provisions to enable the county court of Greene county to make a valid subscription, and to issue the bonds of the county in payment thereof, which would be legal and binding obligations of the county, is inscribed by solemn and appropriate recitals on the face of the bonds, and each of them executed by the proper officials of Greene county, vested with the discretion to make the subscription and clothed with the power to issue the bonds, and attested by the corporate seal thereof.

The bonds were legally issued, under the authority of the statutes of the state, and are valid in the hands of any one who has a legal title to them.

County of Callaway v. Foster, 93 U. S., 574.

VII.

We do not deem it necessary in this case to invoke the doctrine of *bona-fides*. But if it be deemed necessary for the safety of defendant in error, the finding of the court extends to him its protection.

The defendant in error is a bona-fide holder for value, before maturity, of the bonds or coupons in controversy, and as against him the plaintiff in error is estopped from denying their validity.

Knox v. Aspinwall, 21 How., 544.

Mercer County v. Hackett, 1 Wall., 83.
Supervisors v. Schenck, 5 Wall., 784.
Lynde v. The County, 16 Wall., 6.
County of Henry v. Nicholay, 95 U. S., 626.
County of Macon v. Shores, 97 U. S., 279.
Hackett v. Ottawa, 99 U. S., 96.
Wilson v. Salamanca, 99 U. S., 504.
Harter v. Kenochan, 103 U. S., 574.

VIII.

Every question in this record was raised and decided against plaintiff in error, in the case of *State, ex rel. Attorney General, v. Greene County and Greene County Court*, by the Supreme Court of Missouri, at the January term, 1874. The validity of the identical bonds in controversy in this case was there controverted on the same grounds as here. That case was ably argued and was determined on the merits. The power to make the subscription, and to issue the bonds, was by the court held to exist at the time the subscription was made, the same as it did when the act of incorporation of 1857 was passed. That case was cited and approved on the main point by the Supreme Court of Missouri, in the case of *Daniels v. St. L., K. C. & Northern R'y Company* (62 Mo., 48), at the January term, 1876. On the faith that the law governing them was as it was thus judicially construed to be by the highest court in the

state, these bonds were bought and sold in the market as commercial paper.

The case of *State, ex rel., v. Greene County* was approved by this court at the October term, 1876, in *County of Callaway v. Foster* and *County of Scotland v. Thomas*. The bonds of Scotland county were held valid on its authority. The same may be said of the Henry county bonds, in *County of Henry v. Nicholay*, decided at the October term, 1877, and of the Schuyler county bonds, in controversy in *Schuyler County v. Thomas*, decided at the October term, 1878, of this court. It is cited and approved in *County of Ray v. Vansycle*, October term, 1877, in *County of Macon v. Shores*, decided at same term, and in *County of Ralls v. Douglass*, decided at the October term, 1881, of this court.

The case of *State, ex rel. Wilson, v Garroutte* (67 Mo., 445), holding the bonds in controversy to be void, was decided at the April term, 1878, of the Supreme Court of Missouri, on a record differing in most important and essential particulars from the one now before this court. It did not there appear, as it does here, that the subscription was authorized by the Hannibal and St. Joseph Railroad Company, or that the managing, executive and construction committee of the latter company, in charge of the branch road, had its *express authority* to receive and accept the subscription to the capital stock of that company. It did not there appear, as it does here, that the Kansas City and Cameron Railroad Company

had consolidated with the Hannibal and St. Joseph Railroad Company, or that the latter company had, in fact, become possessed of all the rights, property, franchises and privileges which the former company had and possessed by virtue of its charter and the acts amendatory thereof. It did not there appear, as it does here, that at the date of the subscription to the branch road it was then located in Greene county, and that it intersected at Kansas City with the road theretofore called the Kansas City and Cameron Railroad, THEN A PART OF THE HANNIBAL AND ST. JOSEPH RAILROAD.

On this partial and incomplete record the Chief Justice, delivering the opinion of a divided court, in a suit between the collector of Greene county and a citizen of that county concerning the collection of the very tax declared valid in 1874 by the same court, (54 Mo., 540,) determines the rights of the holders of a half a million of the county's indebtedness, each of whom, in his judicial opinion, has bought these bonds with the law and the constitution staring him in the face, and who, "reaching out with insatiate arms to grasp in all the shore, has taken the chances, and taking them has made speculation without profit and ventures without gain!"

Judges Henry and Norton concur without expressing any opinion on the act of March 23d, 1861, on the question involved, holding that the bonds are utterly void for the other reasons given in the opinion of Chief Justice Sherwood: because there was no power to issue them, as the county court of Greene county had no

power to subscribe to the stock in question. Judges Hough and Napton dissent. So that this decision is no authority in the present case on any of the questions involved.

In the later case of *State, ex rel., v. Dallas County Court*, decided at the October term, 1880, and reported in 72 Mo. 330-37, the Supreme Court of Missouri, by the Chief Justice, Norton and Henry, JJ., concurring, holds that the act of March 23d, 1861, requiring a vote of the people to authorize a subscription by a county to the capital stock of a railroad company, was applicable to then existing charters, as well as to those which might be subsequently created, and that bonds issued without such vote were void. Hough and Napton, JJ., dissenting.

These decisions therefore over-rule the cases of *City of St. Louis v. Alexander* (23 Mo., 483), decided in 1856, of *State v. Macon County* (41 Mo., 453), decided in 1867, of *State v. Nodaway County* (47 Mo., 349), decided at the February term, 1871, of *State v. Sullivan County* (51 Mo., 522), decided at the February term, 1873, of *Smith et el. v. County of Clark* (54 Mo., 58), decided at the October term, 1873, and of *The State, ex rel., v. Greene County* (54 Mo., 540), decided at the January term, 1874, of the Supreme Court of Missouri, and are opposed to the long line of cases in this court, already cited, decided upon the authority of the over-ruled cases.

In the case of *County of Schuyler v. Thomas* (98 U. S., 174) this court refused to follow the case

of *State v. Garroutte*, and in *County of Ralls v. Douglass* (105 U. S., 731) it also declined to follow that case and the case of *State v. Dallas County*.

The bonds involved in this suit having been issued when the laws of the state had been settled by repeated judicial construction in favor of their validity, and having been negotiated after such judicial construction, and being in the hands of bona-fide holders for value when the law has been so materially changed by the courts, the rights of the parties to this controversy are to be determined by "the law as it was judicially construed to be when the bonds in question were put upon the market as commercial paper."

County of Ralls v. Douglass, 105 U. S., 731.
Douglass v. County of Pike, 101 U. S., 687.

Where a contract when made is valid by the laws of the state as then expounded by the departments of the government and administered by its courts of justice, its validity and obligation cannot be impaired by any subsequent constitutional ordinance or act of the legislature or decisions of its courts altering the construction of the law.

The State of Missouri v. Miller, 50 Mo., 133.
Ohio Life & Trust Co. v. DeBolt, 16 How., 432.
Gilpecke v. City of Dubuque, 1 Wall., 205.

The defendant in error having purchased the bonds at the time when the authority of the county to issue the bonds had been sustained by the decisions of the highest court of the state, his rights should not be affected by a decision rendered after they accrued, which decision is in conflict with the law as declared, not only by this court in the numerous cases cited, but also by the Supreme Court of Missouri at and before the time he purchased the bonds.

Thompson v. Perrine, 103 U. S., 818.
Havermeyer v. Iowa County, 3 Wall., 303.
Larned v. Burlington, 4 Wall., 275.
The City v. Lamson, 9 Wall., 477.

IX.

The decision of the Supreme Court of Missouri in the case of *State, ex rel., v. Greene County, in 1874*, furnished a rule of property as to these bonds, which is binding on Greene county and its citizens, and it is too late now to disturb that construction. The doctrine of *stare decisis*, as held by the Supreme Court of Missouri, may be invoked in all its force and to its fullest extent to uphold and sustain these obligations of Greene county to its creditors.

In *Smith v. County of Clark* (54 Mo., 71), where this very act of 1861, which is now invoked to destroy

the bonds, was under discussion, Judge Napton, for the court, says:

"Thus it will be seen that up to January, 1872, the decisions of the Supreme Court had been acquiesced in, and no doubt acted upon, by the railroad corporations and the municipal authorities of various counties, cities and towns as the judicial history of the state abundantly shows. The necessary result was the investment of vast sums of money in securities, issued by counties, cities and towns, by virtue of the provisions in the charters of railroad companies. After the acts of 1855, 1860, 1861 and 1865, the subject was regarded as *res adjudicata*, and upon this view, millions of dollars have been invested.

"Whatever therefore might be the opinion of this court, or of any individual judge, had the question come up for examination as an open one, we are all of the opinion that it is now too late to disturb the received construction."

On motion for re-hearing, Adams J., speaking for the court, says:

"The next point was whether this provision of the charter has been repealed by any subsequent legislation, or by the constitution of 1865. That point we considered settled by the repeated decisions of this court, to the effect that no subsequent act of the legislature or the constitution had repealed that provision of the charter.

"On the faith of these decisions, large amounts had been invested, and we considered that the question had been put at rest, and had become a rule of property which we had no right to disturb. This decision only applies to such charters as were granted prior to the constitution of 1865."

See also dissenting opinions of Hough and Napton, JJ., in *State, ex rel. Wilson, v. Garroutte* (67 Mo., 468), and *State v. Dallas County* (72 Mo., 335).

At the October term, 1881, in *The State v. Rainey* (74 Mo., 232), the Supreme Court of Missouri refused to pronounce invalid or erroneous, the judgment of the United States Circuit Court for the Western District of Missouri in *Davis v. Greene County*, for the amount of coupons detached from the bonds in controversy and maturing up to August, 1875. The repudiating counties of Missouri can expect no further aid from that court, in defeating the payment of legal and binding obligations which they have incurred. To look to this court for such aid would seem a vain and fruitless thing, in view of the strong and unwavering determination which it has always displayed to uphold and protect the rights of bona-fide holders of such securities. The effect of the decisions of this court, in sustaining validity of the railroad aid bonds, issued by the many municipalities of this state, under judicial sanction and legislative and constitutional authority, is already to be felt in the healthier tone and purer spirit of public honor and honesty, and is seen in the various recent enactments of the state legislature, by which these dishonored obligations, through a process of compromise and adjustment, equally beneficial to the bondholder, who is not reaching out with insatiate arm to grasp in all the shore, and to